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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~[illegible]~~ 1902.

No. ~~[illegible]~~ 151.

HANNAH SCHAEFER, PLAINTIFF IN ERROR,

vs.

ULIUS WERLING, HENRY DRAPER, AND MARTIN B. SCHAEFER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

FILED AUGUST 14, 1901.

(18,246.)

(18,246.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 393.

HANNAH SCHAEFER, PLAINTIFF IN ERROR,

vs.

JULIUS WERLING, HENRY DRAPER, AND MARTIN B. SCHAEFER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

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1 STATE OF INDIANA:

In the Supreme Court.

Be in remembered that heretofore, to wit, on the 4th day of November, 1899, the same being the 144th judicial day of the May term, 1899, of said court, Hannah Schaefer by S. M. Sayler and B. F. Ibach, her attorneys, filed in the office of the clerk of the supreme court of Indiana, a transcript of the record and proceedings of the Huntington circuit court of said State, in a cause wherein Julius Werling and Henry Draper were plaintiffs and Hannah Schaefer and Martin B. Schaefer were defendants, together with an assignment of errors indorsed thereon, which transcript and assignment of errors are in the words and figures following, to wit:

2 Pleas held before Hon. Jabez T. Cox, judge of the 51st judicial circuit of Indiana and special judge of the Huntington circuit court of Indiana, at the April term thereof, for the year of our Lord, one thousand eight hundred and ninety-nine, to wit:

Transcript of Appeal from Street Assessment.

JULIUS WERLING, HENRY DRAPER, *v.* MARTIN B. SCHAEFER, HANNAH SCHAEFER.	Appeal from Street Assessment.

Be it remembered that on the 12th day of September, A. D. 1894 a transcript on appeal from street assessment for the improvement of William street in the city of Huntington, in Huntington county, Indiana was filed in the office of the clerk of the circuit court of said county and State which transcript is in the words and figures following, to wit:

Matter *in* the improvement of William street.

Be it remembered that upon the days hereinafter mentioned the following proceedings — had, held and transacted by the common council of the city of Huntington, State of Indiana as appears from the records thereof, to wit:

Chamber of the common council of the city of Huntington, Indiana.

SEPTEMBER 12, 1892—8 o'clock p. m.

The common council met in regular session.

Present: His honor Mayor Z. T. Dungan in the chair and the following member-: Councilmen Beck, Dimond, Johnson, Levy, Wilkerson—5.

Absent: Collins—1.

Petition to Improve William Street with Gravel.

3 The petition of William John, *et al.* for the improvement of William street from Charles street to Clark street was read:

HUNTINGTON, INDIANA, *Sept.*, 1892.

To the honorable mayor and members of the common council of the city of Huntington, Indiana.

GENTLEMEN: We, the undersigned, owners of real estate, in said city, represented by the number of feet front and by No. of lot abutting on William street from Charles street to the east line of lot No. 18 in Shaefer's add. hereby petition your honorable body for the improvement of said street between said points by establishing the proper grade and to gravel the same to such width and in such manner as may be by ordinance or resolution provided for in act of General Assembly of Indiana approved March 8, 1889, and amendments thereto.

Name of owners.	No. of lot.	No. of feet.
William Hohn..	3 John's subdiv........................	66
M. W. Little..................	2 John's subdiv........................	70
A. J. Rosenbrough.........	92 Drover's 2nd sub...	66
I. H. Heaston................	95 & 96 " " "	132
Lewis Bridge................	4 " " "	66
W. A. Zeller..................	1 & 2 " " "	132
M. B. Schaefer..............	Schaefer's add. 1 to 17 inclu......	1100
Ben. F. Biliter..............	Drover's 4th sub. 9 & 10...........	134

On motion of Levy the petition was referred to street committee. Motion concurred in.

Chamber of the common council of the city of Huntington, Ind.

SEPTEMBER 26, 1892—8 o'clock p. m.

The common council met in regular session.

Present: Mayor Z. T. Dungan in the chair and the following members present: Beck, Collins, Johnson, Levy, Wilkerson—5.

Absent: Dimond—1.

4 *Report on Petition to Improve William Street with Gravel.*

To the honorable mayor and common council:

Your committee on street- to whom was referred the petition of M. B. Schaefer *et al.* to improve William street, report:

That after full and careful consideration we recommend that the prayer of the petitioners be granted and hereby instruct the city civil engineer to prepare plans and specifications with grade width of gravel and material and place the same in the hands of the city attorney who is instructed to draw an ordinance to improve the same in accordance with such plans and specifications and further report that such improvement shall include the bouldering of gutters.

Respectfully submitted,

WILLIAM DIMOND,
GEORGE BECK,
Com. on Streets and Alleys.

Report Referred to Com. on Streets and Alleys.

Wilkerson moves that the report of the street committee on streets and alleys for the improvement of William street be adopted. Which motion was concurred in.

Chamber of the common council of the city of Huntington, Indiana.

OCTOBER 10, 1892.

Council met in regular session.

Present: Mayor Z. T. Dungan, presiding and the following councilmen present: Beck, Collins, Dimond, Johnson, Levy—5.

Absent: Wilkerson—1.

Report of City Civil Engineer.

Report of the city civil engineer.

HUNTINGTON, INDIANA, *October* 10, 1892.

To the honorable mayor and members of the common council:

Your city civil engineer to whom is referred the matter of the improvement of William street would report there is no grade established on said street and would therefore recommend the following grade, for the improvement of such street: Commencing on the west side of Charles street at an elevation of 191 feet above datum line thence westward along said street at a fall of $\frac{80}{100}$ feet to each 100 feet for 600 feet to an elevation of 186.21 feet above datum line, thence at a fall of $\frac{20}{100}$ feet to each 100 feet for 491 feet to the center of Lafontain street at an elevation of 185 feet above datum line; thence at $\frac{55}{100}$ feet to an elevation of 189 feet above datum line; thence at a fall of $\frac{50}{100}$ feet for 2514 feet to the corporation line at an elevation of 176.30 feet, both sides and center line of said street to be the same level.

Respectfully submitted.

H. H. WAGONER, *C. C. E.*

Report Referred to Com. on Streets and Alleys.

On motion of Levy the report was referred to the street committee, concurred in.

Chamber of the common council of Huntington, Ind.

MAY 8, 1893.

Council met at regular session with Mayor Z. T. Dungan in the chair. And the following councilmen present:

Beck, Collins, Dimond, Johnson, Levy—5.

Absent: Wilkerson—1.

Motion for Engineer to Prepare Plans, etc., to Grade & Gravel William Street.

I move that the city civil engineer be instructed to prepare plans and specifications to grade and gravel William street and report and the city civil 'engineer to report the same to council.

GEO. W. BECK,
Councilman, Third Ward.

Which motion was concurred in by council.

Chamber of the common council of the city of Huntington, Ind.

6 JUNE 26, 1893.

Council met in regular session.

Present: His honor Mayor Z. T. Dungan, and the following councilmen present:

Beck, Collins, Dimond, Johnson, Levy, Wilkerson—6.

Comes now the city civil engineer and reports the plans and specifications to improve William street with graveling, etc. Which specifications *was* read in these words (H. I.):

Chamber of the common council of the city of Huntington, Indiana.

JULY 3, 1893.

Council met in adjourned session.

Present: His honor Mayor Zach T. Dungan, presiding, and the following council:

Beck, Collins, Dimond, Levy, Johnson, Wilkerson—6.

In the matter of William street the following proceedings were had.

Report of Grade by Engineer.

HUNTINGTON, IND., *July* 3, 1893.

To the honorable mayor and common council:

Your civil engineer to whom was referred the grades of William street would report that he has made necessary survey and would recommend the following grade for the improvement of said street.

Commencing at an elevation 189 feet above datum at the west line of Charles street, thence at a fall of $\frac{4}{10}$ feet to each 100 feet for 1100 feet to an elevation of 184.6 feet 15½ above datum; thence at a rise of $\frac{4}{10}$ feet to each 100 feet for 800 feet to an elevation of 187.80 feet above datum; thence at a fall of $\frac{5}{10}$ feet to each 100 feet for

2400 feet to the corporation line at an elevation of 175.80 feet above datum.

Respectfully submitted.

H. H. WAGONER,
City Civil Engineer.

7 The city civil engineer further reported the profile of grade. See Exhibit "A" of this transcript.

Report of Com. of Whole on Grade.

Honorable mayor:

Your committee of the whole to whom was referred the profile of the grade of William street from Charles street to the corporation line have to report that we have carefully examined the same and would recommend its adoption.

LEOPOLD LEVY,
Chairman Com. of the Whole.

Wilkerson moved the adoption of the report.

Which motion was concurred in.

Resolution as to Grade of William St.

Resolution.

Whereas it appears that there has not been any grade established on William street from Charles street to the corporation line of the city of Huntington, Indiana:

Therefore, be it resolved by the common council of the city of Huntington, Indiana, two-thirds of all members concurring, That the grade of William street reported and shown on grade profile as submitted by the city civil engineer be and the same is hereby established and adopted as the grade of William street from Charles street to the corporation line, and the engineer is hereby instructed to record such grade in the book of grades in his office and all grades in conflict herewith are repealed.

Introduced by A. C. Wilkerson councilman from the third ward who moved the adoption of the resolution.

The question being on the adoption.

Those voting in the affirmative were councilmen: Beck, Collins, Dimond, Levy, Johnson, Wilkerson—6.

Voting in the negative—0.

The resolution was therefore declared adopted.

8 Chambers of the common council of the city of Huntington, Ind.

JULY 10, 1893.

Council met in regular session with Mayor Z. T. Dungan in the chair and the following members: Councilmen Beck, Collins, Dimond, Johnson, Levy— 5.

Absent: Wilkerson—1.

—

6.

Resolution to Improve William Street with Gravel.

Resolution for the improvement of William street.

Resolution

To improve William street by grading, guttering, and graveling from the west line of Charles street to Clark street.

Be it resolved by the common council of the city of Huntington, Indiana, two-thirds of all the members concurring: That William street in the city of Huntington, Indiana shall be improved as follows: Grade 30 feet wide; gutters on each side 3 feet wide; bouldered with boulders with a sandstone curb on outer edge 3 inches thick and set 18 inches deep. The street bed between gutters to be 24 feet and covered with good clean gravel 12 inches deep in the center and 6 inches at the edges and 8-inch vetrified sewer tile under all street crossings.

The whole to be done according to plans and specifications profile and cross-sections already prepared by the city civil engineer and filed herewith and to which reference is made for particular descriptions upon this work all to be done to the approved satisfaction of the city civil engineer.

The common council hereby declaring such improvement necessary and be it further

Resolved, That the cost and expenses thereof, except so much as is occupied by the street crossings of streets and alleys, be assessed against and collected from the owners of lots and parcels of grounds as follows to wit:

9 Names of owners.	Description.	Lots out in.
David Chambers		83 Drover's 1 add.
Anna F. & Harman W. Drover		84 " "
Susanna Wilhelm		85 " "
Mary Drover		86 " "
Mary Drover		87 " "
Christena Urshel		88 " "
Christena Urshel		89 " "
Susanna Wilhelm		90 " "
Barbara Seber		91 " "
A. J. Rosebrough		92 " "
Susanna Wilhelm		93 " "
Nathan W. Swafford		94 " "
I. H. Heaston		95 " "
I. H. Heaston		96 " "
Homer Snyder		97 " "
Frances S. & Kate Snyder		98 " "
Cyrus L. Mingus		99 " "
Cyrus L. Mingus		100 " "
W. A. Zeller		1 Drover's 3 add.
W. A. Zeller		2 " "
M. J. F. J. W. & Daisy Kuhlman.	East 44 ft. pt. 3	3 " "
Nathan Kuhlman	West 22 ft. pt. 3	3 " "
Lorena Bridge		4 " "
George Zitzer		5 " "
Edna B. Fetters		6 " "

Name of owners.	Description.	Lots out in.
Mahala Emerick		1 Drover's 4 add.
Amanda Mohn, trustee		2 " "
B. F. & L. B. Biliter		9 " "
B. F. & L. B. Biliter		10 " "
Hezekiah Kilander		11 " "
Jacob Boose & Wm. Stults		1 Wm. John sub.
Lavina Little		2 Wm. John sub.
10 William John		3 " "
Julia Scheerer		1 Scheerer add.
Nicholas & Caroline Windermuth.		2 " "
Julia Scheerer		3 " "
Jacob C. Scheerer		4 " "
Hannah Shaefer		5 Shaefer add.
Hannah Schaefer		6 " "
Daniel & Caroline Ager		7 " "
Hannah Schaefer		8 " "
Hannah Schaefer		9 " "
Hannah Schaefer		10 " "
Hannah Schaefer		11 " "
Hannah Schaefer		12 " "
Hannah Schaefer		13 " "
Hannah Schaefer		14 " "
Hannah Schaefer		15 " "
Hannah Schaefer		16 " "
Hannah Schaefer		17 " "
Wm. H. Drover	Pt. S. E. sec. 15 28 N. R. 9 E. Com. at a point 50 ft. S. 74° W. from the S. W. cor. of lot No. 6 in Drover's 3rd sub. Thence S. 74° W. 192.8 ft. Thence N. 16° W. 150 ft. Thence N. 74° E. to the W. line of South Lafontain St. Thence S. 16° E. along the said W. line to place of beginning.	
Hannah Dover	Pt. S E. sec. 15 T. 28 N. R. 9 E. Com. at a point 242.8 ft. S. 74° W. from the S. W. cor. of lot No. 6 in Dover's 3 subd. Thence 74° W. 252 ft. to the E. line of Lucin street. Thence N. 16° W. 150 ft. Thence S. 16° E. 150 ft. to beginning.	
11 Julia Scheerer	W. pt. 2	2
Anna E. Ward	E. ½	3
Louis Myers	W. ½	3

Said improvement to be made under and according to the provisions of the statute in such cases made and provided and in accordance with plans and specifications thereof and under the supervision of and to the satisfaction of the city civil engineer; and be it further

Resolved, That the city clerk give notice to the property-owners along the line of said proposed improvement by publication in the Daily Evening Herald a daily newspaper of general circulation in said county, on the 13th and 20th of July 1893, for such property-owners to appear at the chambers of the common council in the city of Huntington, at a meeting of said council to be held on the 31st day of July, 1893, at 7.30 o'clock p. m. and make any objections they or any of them may have to the necessity for said proposed improvement.

Submitted to George W. Beck, councilman of the third ward.

Levy moved the adoption of the resolution.

The question being on the adoption. Those voting in the affirmative were, councilmen:

Beck, Collins, Dimond, Johnson, Levy—5.

Voting for the negative—0.

Absent: Wilkerson—1.

The resolution was therefore declared adopted.

Chamber of the common council of the city of Huntington, Indiana.

AUGUST 14, 1893.

12 Council met in regular session with Mayor Z. T. Dungan in the chair and the following members — council:

Beck, Collins, Dimond, Johnson, Levy, Wilkerson—6.

Petition to Improve William Street with Gravel.

A petition of A. J. Rosenbrough *et al.*, was then read as follows:

To the honorable mayor and common council of the city of Huntington, Indiana:

We the undersigned owners of real estate represented by the feet fronting and abutting upon William street from Charles street to Clark street as designated by resolution passed by the common council on July 10, 1893 hereby petition your hon. body to pave the same with brick laid on a good and sufficient foundation and for an assessment for the whole cost of such improvement of said street (except the proportion thereof occupied by streets and alleys crossings) against the abutting real estate and to be paid for under the Barrett Law system.

A. J. ROSENBROUGH.
N. W. SWAFFORD.
FRANCES SNYDER.
LEONORA BRIDGE.
I. H. HEASTON.
WM. JOHN.
SUSANNA WILHELM.
D. YINGLING,
JOHN MINNICH, } *School Board.*
LEWIS BRIDGE,

MAHALA EMERICK.
KATE WRIGHT.
GEORGE ZITZER.
N. H. KUHLMAN.
WM. H. DROVER.
LAVENA LITTLE.
CHRISTENA URSHEL.

Johnson moved to refer the same to the street committee and city civil engineer. Concurred in.

Remonstrance to Improvement of William Street with Brick.

Remonstrance.

To the mayor and common council of the city of Huntington, Indiana:

13 We the undersigned owners of real estate represented by the feet fronting and abutting upon William street from Charles street to Clark street would remonstrate against paving William street with brick and pray your honorable body to have the improvement of the street made in accordance with the resolution passed by the honorable body July 10, 1893.

Name- of petition-.
JACOB SCHEERER.
H. KILANDER.
W. A. ZELLER.
H. C. SNYDER.
A. E. WARD.
N. WINDERMUTH.
JACOB BOOSE.
WILLIAM STULTS.
A. MOHN, *Trustee,*
By WM. C. KOCHER, *Agent.*
FREDERICKA DROVER.
SIMON DROVER.
JACOB C. SCHEERER.
LOUIS MAYER.
JACOB SEBER.
M. B. SCHAEFER.
C. L. MINGUS.
WM. E. CHAMBERS.

In all 2868 feet.

Wilkerson moved to refer the same to street committee and city civil engineer. Motion concurred in.

Rep't of Engineer that Grade Was Almost Completed.

HUNTINGTON, IND., *August* 12, 1893.

To the honorable mayor and common council:

Your city civil engineer would report that the grade of William street is almost completed and that steps should at once be
14 taken to contract the same so the same can be completed this year.

Respectfully submitted.

HENRY H. WAGONER,
City Civil Engineer.

Levy moved to refer the report to the street committee, which motion was concurred in.

Chambers of the common council of the city of Huntington, Ind.

August 10, 1893.

Council met in regular session with Leopold Levy, chairman *pro tem.* of the council in the chair and the following councilmen present: Beck, Dimond, Johnson, Levy, Wilkerson—5.

Absent: Councilman Collins and his honor Mayor Z. T. Dungan—2.

Rep't of Com. on Streets & Alleys on Petition & Remonstrance.

To the honorable mayor and common council:

Your committee on street- and alleys to whom was referred the petition and remonstrance on William street also C. C. engineer's report of grade, report that we have had the same under consideration and would recommend the resolution passed July 10, 1893, to gravel the same be and is hereby rescinded and that the prayer of the petitioners to pave the same with brick be granted and the city attorney is hereby instructed to draft an ordinance in accordance with the same.

Respectfully submitted.

W. DIMOND,
GEO. BECK,
LEOPOLD LEVY,
Committee on Street- and Alleys.

Wilkerson moved the adoption of the report.

Motion concurred in.

15 Chamber of the common council of the city of Huntington, Ind.

August 23, 1893.

Council met in adjourned session.

Present: Mayor Z. T. Dungan in the chair and the following members: Beck, Dimond, Johnson, Levy—4.

Absent: Collins, Wilkerson—2.

Resolution Repealing Resolution to Gravel.

Resolution.

Resolved That the resolution adopted by the common council on the 10th day of July, 1893, in which it was ordered that William street in said city of Huntington, Indiana be graded and graveled and bouldered be and the same is hereby repealed and rescinded and all orders and motions and other proceedings be set aside as though no action had been taken.

Offered by Geo. W. Beck, from the third ward.

Levy moved the adoption of the resolution.

The question being on the adoption.

Those voting in the affirmative were councilmen Beck, Dimond, Johnson, Levy—4.

Negative: None—0.
Absent: Collins, Wilkerson—2.
The resolution was therefore adopted.

Matter of the Improvement of William Street.

Be it remembered that on the days hereinafter mentioned the following proceedings — had, held and transacted by the common council of the city of Huntington, State of Indiana, as appears from the records thereof, to wit:

Chamber of the common council of the city of Huntington, Ind.

16 WEDNESDAY, *August* 23, 1893—7.30 o'clock p. m.

Council met in adjourned session,
Present: His honor Mayor Z. T. Dungan in the chair and the following members of the council: Beck, Dimond, Johnson, Levy—4.
Absent: Collins, Wilkerson—2.

Resolution to Improve William Street with Brick.

Resolution.

To improve William street from the west line of Charles street by paving with vitrified brick or vitrified blocks.

Be it resolved by the common council of the city of Huntington, Indiana, two-thirds of all the members concurring That William street in the city of Huntington, Indiana, from the west line of Charles street to the west line of Clark street be graded and paved with vitrified brick or vitrified blocks to the width of thirty feet between the curbs. The curbs to be Berea, Feelten, Sunbury or Iberia stone; the stone to be 3 inches thick and 16 inches deep, in length not less than 3 feet, and street and alleys corners, the curb to be *to* cut to a curve of a radius of four feet.

The foundation of the paving to be of broken stones of a uniform depth as fixed by the specifications. The foundation to be rolled with a ten-ton roller; said foundation to be covered with *a* sufficient sand and paved with first-class vitrified brick or blocks and the joints between all spaces to be filled full of coal-tar paving cement; the whole to be done in accordance with the plans and specifications herewith filed and made a part hereof which also are on file in the city civil engineer's office and the said plans and specifications are referred to as to all particulars and details and the whole of said work to be done to the acceptance and satisfaction of the city civil engineer.

17 The common council hereby declare such improvements necessary, and be it further resolved that the cost and expenses thereof except so much as is occupied by the crossings of streets and alleys be assessed against and be collected from the owners of lots and parcels of ground as follows in accordance with the acts of the legislature approved March 8, 1889, and amendments thereto the lots and lands are as follows:

David Chambers—lot No. 83 in Drover's 1st addition.

Anna F. and Herman W. Drover—lot No. 84 Drover's 1st addition.

Susanna Wilhelm—lot 85 Drover's 1st addition.

Mary Drover—lot 86 Drover's 1st addition.

Mary Drover—lot No. 87 Drover's 1st addition.

Christena Urshel—lot No. 88 Drover's 1st addition.

Christena Urshel—lot No. 89 Drover's 1st addition.

Susanna Wilhelm—lot No. 90 Drover's 1st addition.

Barbara Seber—lot No. 91 Drover's 1st addition.

A. J. Rosebrough—lot No. 92 Drover's 1st addition.

Susanna Wilhelm—lot No. 93 Drover's 1st addition.

Nathan W. Swafford—lot No. 94 Drover's 1st addition.

I. H. Heaston—lot No. 95 Drover's 1st addition.

I. H. Heaston—lot No. 96 Drover's 1st addition.

Homer Snyder—lot No. 97 Drover's 1st addition.

Frances S. & Kate Snyder—lot No. 98 Drover's 1st addition.

Cyrus L. Mingus—lot No. 99 Drover's 1st addition.

Cyrus L. Mingus—lot No. 100 Drover's 1st addition.

Wm. A. Zeller—lot No. 1 Drover's 3rd addition.

W. A. Zellers—lot No. 2 Drover's 3rd addition.

M. J. E. F. J. W. & Daisy Kuhlman—east 44 feet part lot 3 Drover's 3rd add.

Nathan Kuhlman—west 22 feet part lot 3 Drover's 3rd addition.

Lenora Bridge—lot No. 4 Drover's 3rd addition.

George Zitzer—lot No. 5 Drover's 3rd addition.

Edna B. Felter—lot No. 6 Drover's 3rd addition.

18 Mahala Emerick—lot No. 1 Drover's 4th addition.

Amanda Mohn—lot No. 2 Drover's 4th addition.

B. F. & L. C. Biliter—lot No. 9 Drover's 4th addition.

B. F. & L. C. Biliter—lot No. 10 Drover's 4th addition.

Hezekiah Kilnader—lot No. 11 Drover's 4th addition.

Jacob Boose & Wm. Stults—lot No. 1 Wm. John's subdivision.

Lavina Little—lot No. 2 Wm. John's subdivision.

William John—lot No. 3 Wm. John's subdivision.

Julia Scheerer—lot No. 1 Scheerer's addition.

Nicholas & Caroline Windermuth—lot No. 2 Scheerer addition.

Julia Scheerer—lot No. 3 Scheerer's addition.

Jacob Scheerer—lot No. 4 Scheerer's addition.

Hannah Schaefer—lot No. 5 Schaefer's addition.

Hanna Schaefer—lot No. 6 Schaefer's addition.

David & Caroline Ager—lot No. 7 Schaefer's addition.

Hanna Schaefer—lot No. 8 Schaefer's addition.

Hannah Sc*ah*efer—lot No. 9 Schaefer's addition.

Hannah Schaefer—lot No. 10 Schaefer's addition.

Hannah Schaefer—lot No. 11 Schaefer's addition.

Hannah Schaefer—lot No. 12 Sc*ah*efer's addition.

Hannah Schaefer—lot No. 13 Sc*ah*efer's addition.

Hannah Schaefer—lot No. 14 Schaefer's addition.

Hannah Sc*ah*efer—lot No. 15 Schaefer's addition.

Hannah Schaefer—lot No. 16 Schaefer's addition.

Hannah Schaefer—lot No. 17 Schaefer's addition.

William Drover—part of the southeast — section 15 township 28 north of range 9 east, commencing at a point 50 feet south 74 degrees west from the southwest corner of lot No. 6 in Drover's 3rd subdivision; thence south 74 degrees west 192.8 feet; thence
19 north 16 degrees west 150 feet; thence north 74 degrees east to the west line of South Lafontain street; thence south 16 degrees east along said west line to the place of beginning.

Hannah Drover—Part southeast — section 15 township 28 north range 9 east commencing at a point 242.8 feet south 74 degrees west from the southwest corner of lot No. 6 in Drover's 3rd subdivision; thence south 74 degrees west 252 feet to the east line of Lucin street; thence north 16 degrees west 150 feet; thence north 74 degress east 252 feet; thence south 16 degrees east 150 feet to the place of beginning.

Julia Scheerer—West part of lot No. 2 Drover's outlots.

Anna E. Ward—East ½ of lot No. 3 Drover's outlots.

Louis Myers—West ½ of lot No. 3 Drover's outlots.

And be it further resolved That the city civil engineer shall duly advertise for three weeks in a newspaper of general circulation announcing therein that on the day named in said notice that proposals to contract said work will be received by said engineer and common council and after said contract is let said engineer shall set the grade stakes superintend said construction and the said engineer shall announce in said notice that all bids will be received up to 7 p. m. of September 26, 1893 at which time the common council of the city will open and award or reject the same.

Said improvements to be made under and according to the provisions of the statutes in such cases made and provided and in accordance with plans and specifications thereof. And under the supervision of and to the satisfaction of the city civil engineer, and be it further

20 Resolved, That the city clerk give notice to the property-owners along the line of the proposed improvement by publication in the Daily Democrat a daily newspaper of general circulation in said county on the 24th and 31st day- of August 1893, for such property-owners to appear at the chambers of the common council of the city of Huntington at a meeting of said council to be held on the 11th day of September 1893 to make any objection they or any of them may have to the necessity for said proposed improvement.

Submitted by—

GEORGE BECK,
Councilman from the 3rd Ward.

Levy moved the adoption of the resolution.

The question being, Shall the resolution be adopted?

Voting in the affirmative were councilmen:

Beck, Dimond, Johnson, Levy.

Voting in the negative—none.

The resolution was therefore adopted.

Chamber of the common council of the city of Huntington, Indiana

MONDAY, *August* 28, 1893—7.30 o'clock.

Council met in regular session.

Present: His hon. Mayor Z. T. Dungan and the following members — council: Beck, Dimond, Johnson, Levy—4.

Absent: Collins and Wilkerson—2.

Resolution to Amend Resolution to Pave with Brick.

A resolution to amend a resolution passes by the common council on Wednesday evening, the 23rd day of August, 1893, in which William street is ordered to be paved.

Be it resolved by the common council of the city of Huntington, Indiana two-thirds thereof concurring That that part of said resolution directing the city civil engineer to advertise for bids
21 to contractors and setting the time for the filing of said bids
on the 18th day of September 1893 is amended to read as follows: That all bids will be received up to 7 o'clock p. m. of September 26th 1893; and also that part of said resolution which directs the city clerk to give the property-owners notice that a meeting of the common council will be held on the 11th day of September 1893 for any and all objects to the necessity thereof, be amended to read that the clerk give notice on August 29th 1893 and September 5th 1893 that on September 25th 1893 a meeting of the common council will be held to hear any objections of any property-owners.

Offered by—

GEORGE BECK,
Councilman from Third Ward.

Levy moved the adoption of the resolution.

The question being on the adoption.

Voting in the affirmative were councilmen:

Beck, Johnson, Levy, Dimond—4.

Voting in the negative—none.

Absent: Collins and Wilkerson—2.

The resolution was therefore declared adopted.

Proof of Publication of Notice to Improve William St.

Proof of publication.

(Copy.)

Notice.

To improve William street by paving the same.

Notice is hereby given that at an adjourned and at a regular session of the common council of the city of Huntington, Ind. held on the 23rd day of August 1893 and on the 28rh day of August 1893 held at the council chambers of said city said council adopted a resolution declaring that it was necessary to improve William

street from the west line of Charles street to the west line of
22 Clark street in said city by grading and paving the same
with vitrified brick or vitrified blocks.

Notice is also given that objections to said improvement may be made at the common council chambers of said city at 7.30 o'clock p. m. on the 25th day of September 1893 before said council which will be in session for that purpose at which time any of the property-owners may make objections they or any of — may have to the necessity of said proposed improvement.

WILLIAM SCHWARTZ,
Clerk of the City of Huntington.

August 29, September 5.

23 Specifications for paving William street with vitrified brick or blocks from the west line of Charles street to the west line of Clark street, in the city of Huntington, Ind.

1. Where the word "engineer" is used it shall be held to mean the city civil engineer, or his authorized agent.

2. Wherever the word "contractor" is used it shall be held to mean any contractor or firm of contractors, or any member of a firm contracting for any of the work, or his or their agents, one of whom shall be upon the work at all times during its progress.

3. Whenever the contractor fails to complete the work herein specified, within the time named, he shall be liable for the wages of the superintendent appointed on the work, from such time as specified for the completion until the final acceptance of the work, and the amount of such wages shall be deducted from any monies which may be due him from the city, and in addition will also be deducted the sum of $10.00 *per diem* for the same period, estimated and fixed damages to the city of Huntington for failure to complete the work in the time specified, (time of completion of contract being an essential element and consideration), unless the city council shall by resolutions extend the time for the completion of said work.

4. If at any time the engineer and common council shall be of the opinion that the said work is unnecessarily delayed, and will not be finished in the prescribed time, the engineer may notify the contractor in writing to that effect. If the contractor shall not within ten days thereafter take such measures as will in the judgment of the engineer insure the satisfactory completion of the work, the engineer may then notify the aforesaid contractor to discontinue all work under the contract, and the contractor shall immediately respect such notice and stop work, and cease to have any rights to the possession of the ground or to any material thereon. The engineer shall thereupon have the power to place such and as many persons as he may deem advisable by contract or otherwise to work at and to complete the work herein described, and to use such materials and tools as he may find upon the line of said work, or to procure other material for the completion of the same, and to charge the expense of such material and labor to said contractor, and the expense so charged shall be deducted from and paid out of such

money as may then be due, or may thereafter be due to said contractor, and in case such expense is less than the sum which would have been payable under his contract if the same had been completed by the contractor, he shall be entitled to receive the difference, and in case such expense is greater the contractor shall pay the amount of such excess, on notice of said engineer, to the city of Huntington, Indiana.

5. The work shall be begun at such points as the engineer may designate. The engineer may from time to time suspend the work at certain places or altogether, if in his opinion the public need requires it. But said engineer shall not have the right to stop the work altogether for more than one week at a time, except that whenever the weather is not suitable, in the opinion of the engineer, for doing the work he may cause the work to be suspended. In case of any such suspension, the time within which the contract is to be, or required to be completed, the time shall be extended by as many days as the same was suspended.

6. Upon any stoppage of the work, all material is to be
24 piled up snugly, so as not impede the travel on sidewalks
or carriageway, or the use of fire-hydrants, and all rubbish, the material is to be removed immediately thereafter from the ground by the contractor.

7. The contractor will be required to keep all streets and alleys in a passable condition for the public during the progress of the work, unless privilege is granted by the engineer or common council for closing such streets and alleys.

8. The city reserves the right to lay or relay all necessary gas, water or sewer pipe, during the progress of the work without extra charge by the contractor, but should the contractor be delayed by any such work, the time specified in the contract shall be extended by as many days as the work has been delayed.

9. The engineer and common council may, when in their opinion it becomes necessary, order the omission thereof, or the addition thereto, or make any alteration whatever in the work or materials that they may deem expedient, provided said order be in writing, signed by the contractor and engineer and be approved by the common council, unless otherwise stipulated in these specifications, and such alteration, addition, omission or change, shall not in any way violate the contract or annul the same, or give the contractor any claim for damages whatever by loss of profit or otherwise on account of not being allowed to do such work or furnish material.

10. All claims for damages or any other matter or thing for which the contractor may consider himself entitled to extra remuneration, must be made in writing to the common council at the time damages occur, or the cause for the claim arises, and unless such claim is presented it shall be held that the contractor has waived such claim and he shall not be entitled to any claim or receive any pay for the same.

11. The contractor is obliged to execute orders for extra work not included in these specifications, necessary in or connected with said

improvement, and to execute properly as directed, at reasonable prices if so directed by the engineer.

12. If any person employed by the contractor on the work, should appear to the engineer to be incompetent, or to act in an improper manner, or who shall refuse or neglect to obey the directions of the engineer, he shall be discharged immediately on the requisition of the engineer, and such person shall not again be allowed to be employed on the work without permission from the engineer.

13. All necessary day and night guardsmen, barricades or lights shall be employed and erected by the contractor who shall be held liable to the city for all claims for damages resulting from the obstructing of the street or streets, or from any neglect on the part of the contractor, or his agent or employés, either in failing to keep guardsmen, barricades or lights or from the use of dynamite or otherwise.

14. In making excavations and foundations, the contractor is to keep them clear of all water from whatever source at his own expense.

15. Material delivered on the ground to be neatly and compactly piled up along the sides of the roadway, or upon the front of the sidewalks adjacent thereto as the engineer may direct, in such manner as to cause the least inconvenience to property-holders and the general public, and not to be within three feet of any fire-hydrant. Private drives and street crossings to be kept open. Shade trees shall be protected from all damages by stone or otherwise.

16. No material shall be used until it has been examined and approved by the engineer, who shall have full power to condemn any work or material not in accordance with these specifications and to require the contractor to remove at once any work or material so condemned, and the said contractor shall at his own expense,
25 replace said work or material to the satisfaction of the engineer, and the decision of the engineer shall be final as to the quality of work and material. In case the contractor shall neglect or refuse after written notice, to remove or replace said rejected work or materials, they shall be removed and replaced by the engineer, and at the contractor's expense.

17. In case of the absence of the engineer, or in case he shall so direct, the duties and powers herein assigned to him will devolve upon his assistant duly appointed.

18. The city will not be responsible for any delay or stoppage in said work, by any suit of injunction or failure to obtain right of way, or in any matter by which said work may be estopped or detained, but the contractor shall be allowed as many more days to complete the work as said work was delayed.

19. No excavated earth, stone or material shall be allowed to remain along the line of said improvement when completed, except the portion needed for filling along said improvement.

20. The work must be commenced within 30 days after the approval of the contract by the city council, and the whole of said work to be completed by the first day of July, 1894. But nothing con-

tained in this section is to be construed as hindering the contractor from completing this work in a shorter time.

21. The price bid for the paving to include all labor, material, ballasting, puddling, rolling, etc., necessary in its preparation, together with that of the subgrade, and in the treatment of the paving when laid.

22. No money will be paid to the contractors until the engineer and the superintendent of the work (if there shall be one) have certified that the work has been done according to contract.

23. All settlements, defects or damages in any portion of the pavement, or any derangement in the alignment and grades of the curbing, before the expiration of five years from the acceptance of the work by the engineer, shall be repaired and made good at the contractor's expense, and all rubbish which may accumulate during and by reason of the work herein provided for, shall be removed by the contractor and the street left clean and in good condition.

24. There will be retained out of the moneys payable to the contractor such per centum of the amount of this contract as the engineer may deem proper, the same to be expended in the manner hereinbefore provided in making such repairs on the line of the street as the engineer may deem necessary; provided, that the amount so retained shall not exceed 5 per cent. of the aggregate amount of this contract. Upon the expiration of the said period of five years, provided the said pavement shall at that time be in good order, the contractor, upon the production of a certificate from the city civil engineer, stating that the street is in good condition, shall receive the whole, or such part of the sum last aforesaid, as may remain after the expense of making the said repairs in the manner aforesaid, shall have been paid therefrom.

Grading.

25. The subsoil or other material will be excavated to the required depth below the completed surface of roadway and trenches excavated for the curb by the city, and the contractor will be required to make all necessary filling for foundation and backing of the curb to make the same on the proper line and grade of the improvement. Soft or spongy places not affording a firm foundation will be dug out, refilled with good bank gravel or broken stone, and thoroughly compact by rolling or ramming by the contractor, after the excavation is made and before any ballast of any kind is placed thereon.

Foundation.

26. Upon the subgrade prepared as in section twenty-5 will be evenly spread a layer of crushed or broken stone which shall not measure more than two and one-half inches, upon which shall be spread bank sand of sufficient thickness to completely cover the surface of the stone, the intention being to solidify this layer by filling voids with sand. This layer shall be compacted by rolling with a 2,400-lb. foot-face roller. After said layer is compacted the thickness of the same shall be sufficient to make the surface of such rolled stone enough below the surface grade of the street to receive one

inch of sand and the depth of the brick or blocks used in the pavement. Where additional material is required after rolling, to bring the surface of the foundation to proper grade, the rolled surface must be loosened to the depth of two inches to receive the new material, after which the road will be rolled without additional compensation to the contractor; all stone must be crushed or broken before being hauled upon the street, and under no circumstances will any stone be allowed to be hauled and deposited on the street and then broken.

Curbing.

27. The curbstone must be of the best quality of Berea, Ful-
26 ton, Sunbury or Iberia stone, or other equally as good, 16
inches deep, not less than three feet long; bases not to be less than nine-tenths of their top lengths, to be tool or cradle dressed, true and smooth, at least two inches on the back and eight inches on face, all rough portions below this point to be smoothed sufficient to receive ends of brick, top to be dressed to a straight line, and to a one-half-inch bevel, and to a uniform thickness of 3 inches. The corner next to the gutter to be one inch, quarter round; ends to be neatly dressed so as not to exceed three-eighths of an inch, at depth of at least ten inches the full thickness of the stone. Stone to be set on the true line and grade of the street, on a firm bed of three inches of coarse sand on fine gravel, settled in place by tamping on top with a rammer and backed up full to within six inches of the top of the stone, with six inches in thickness of gravel in the rear, both bed and back to be thoroughly tamped with a heavy hand-tamper to the full depth thereof; at street corners the curb to be cut on a curve of a radius of four (4) feet, with true and even joints, and to be of the same description as the curb before described, and set in the same manner.

Sewer inlets.

28. The contractor will be required to furnish all labor to set sewer inlets of such number and size and shape as the engineer may direct and to lay to such a grade as the engineer may direct; sewer pipe to connect the sewer inlet with the sewer, and the city will furnish all materials necessary, and the contractor for the curbing shall be required to do the work set out in this section.

Superstructure.

29. The bricks or manufactured blocks must be hard-burned paving bricks, or blocks specially burned for street paving, of uniform size, free from flaws, cracks or breaks, and equal in all respects to sample to be filed in the office of the city engineer by each bidder. No bats or broken bricks or blocks are to be used, except at the curbs, where nothing less than a half brick or block will be used to break joints. The bricks or blocks to be kept in straight lines and all joints broken by a lap of at least two (2) inches, to be set upon one inch of clean, sharp sand, in a perfectly upright manner, as closely and compactly together as possible, and at right

angles with the lines of the curb, except at street intersections, where they are to be laid as the engineer may direct.

30. The paving to be thoroughly rammed two or more times as may be directed with a paver's rammer weighing not less than seventy-five pounds, no iron of any kind being allowed on its lower face to come in contact with the paving; when complete to be the grade and crown of the street.

31. The joints or space between all paving blocks or bricks to be filled full with coal-tar paving cement, ordinarily numbered six. The composition shall be heated and used at a temperature of not less than 300° Fahrenheit, to be determined by a *guage* or indicator placed upon the tank used in the street; extra material and care shall be used at the gutters in filling all joints in both paving and curbing, and around catch-basins or other receptacles, to effectually prevent the leakage of water into the sub-roadway, all joints to be left completely filled to the top before dressing; the cement not to be used until the blocks or bricks are completely dry.

32. The surface of the paving, when completed as above, shall be covered with a half-inch top dressing of clean, coarse sand of approved quality.

33. The width of roadway between curbs to be 30 feet, and to extend the full width of street at alley and street intersections, and of such a width as the engineer may direct.

34. The grade of the curb and the crown of the roadway to correspond with the cross-section of said street.

35. The cross-section, plans, profile, notice and grade of said street are made a part of these specifications.

36. Bids must be made by the square yard for the paving, and by the lineal foot for the curb, to include the setting of all sewer inlets and must be accompanied by a good and sufficient bond, with at least one resident freeholder or a certified check for five hundred dollars that if the bid is accepted a contract will be entered into and the performance of it properly secured.

37. Bidders are required to use the printed forms which will be furnished on application.

By order of the common council.

H. H. WAGONER,
City Civil Engineer.

27 I, John V. Morgan being duly sworn, on oath say*s* that I am the book-keeper of the Huntington Democrat, that the same is a daily and weekly newspaper of general circulation, and printed in the county and State aforesaid; and the annexed copy of notice was published in said newspaper 2 consecutive weeks as follows: August 29, and September 5, 1893.

JOHN V. MORGAN.

Subscribed and sworn to this 25th day of September, 1893.

ZACH. T. DUNGAN, *Mayor.*

Printers' fees—$3.36.

Proof of Publication of Adoption of Resolutions to Improve William St. with Brick, and to Receive Bids, and to Property-owners of Meeting of Council to Hear Petitions.

Proof of publication.

Copy.

A Resolution

To improve William street from the west line of Charles street to the west line of Clark street by paving with vitrified brick or vitrified blocks.

Be it resolved by the common council of the city of Huntington, Indiana, (two-thirds of all the members concurring) That William street in the city of Huntington, Indiana, from the west line of Charles street to the west line of Clark street be graded and paved with vitrified brick or vitrified blocks to the width of thirty feet between the curbs. The curb to be Berea, Fulton, Sunbury or Iberia stone, the stone to be 3 inches thick and 16 inches deep in lengths not less than 3 feet, and street and alley corners the curb to cut to a curve of the radius of four feet.

The foundation of the paving to be of broken stone of a uniform depth as fixed by the specifications. The foundation to be rolled with a ten-ton roller, said foundation to be covered with sufficient sand and paved with first-class vitrified brick or blocks and 28 the joints between all spaces to be filled full of coal-tar paving cement, the whole to be done in accordance with the plans and specifications herewith filed and made a part hereof which are also on file in the city civil engineer's office, and the said plans and specifications are referred to as to all particulars and details and the whole of said work to be done to the acceptance of the city civil engineer.

The common council hereby declaring such improvement necessary. And be it further

Resolved, That the costs and expenses thereof, except so much — is occupied by the crossing of street- and alleys, be assessed and collected from the owners of the lots and parcels of ground as follows, in accordance with the acts of the legislature, approved March 8, 1889, and amendments, which lots and lands are as follows, to wit:

David Chambers—lot No. 83 Drover's 1st addition.
Anna F. & Herman W. Drover—lot No. 84 Drover's 1st addition.
Susan Wilhelm—lot No. 85 Drover's 1st addition.
Mary Drover—lot No. 86 Drover's 1st addition.
Mary Drover—lot No. 87 Drover's 1st addition.
Christena Urshel—lot No. 88 Drover's 1st addition.
Christena Urshel—lot No. 89 Drover's 1st addition.
Susanna Wilhelm—lot No. 90 Drover's 1st addition.
Barbara Seber—lot No. 91 Drover's 1st addition.

A. J. Rosebrough—lot No. 92 Drover's 1st addition.

Susanna Wilhelm—lot No. 93 Drover's 1st addition.

Nathan W. Swafford—lot No. 94 Drover's 1st addition.

I. H. Heaston—lot No. 95 Drover's 1st addition.

I. H. Heaston—lot No. 96 Drover's 1st addition.

Homer Snyder—lot No. 97 Drover's 1st addition.

Frances S. & Kate Snyder—lot No. 98 Drover's 1st addition.

Cyrus L. Mingus—lot No. 99 Drover's 1st addition.

29 Cyrus L. Mingus—lot No. 100 Drover's 1st addition.

Wm. A. Zeller—lot No. 1 Drover's 3rd addition.

Wm. A. Zeller—lot No. 2 Drover's 3rd addition.

M. J., E. F., J. W. & Daisy Kuhlman—east 44 feet, part lot 3, *lot* 3, Drover's 3rd addition.

Nathan Kuhlman—west 22 feet, part No. 3, lot No. 3 Drover's 3rd addition.

Lenora Bridge—lot No. 4 Drover's 3rd addition.

George Zitler—lot No. 5 Drover's 3rd addition.

Edna B. Felter—lot No. 6 Drover's 3rd addition.

Mahala Emerick—lot No. 1 Drover's 4th addition.

Amanda Mohn, trustee—lot No. 2 Drover's 4th addition.

B. F. & L. C. Biliter—lot No. 9 Drover's 4th addition.

B. F. & L. C. Biliter—lot No. 10 Drover's 4th addition.

Hezekiah Kilander—lot No. 11 Drover's 4th addition.

Jacob Boose & Wm. Stults—lot No. 1 Wm. John's subdivision.

Lavina Little—lot No. 2 Wm. John's subdivision.

Wm. John—lot No. 3 Wm. John'- subdivision.

Julia Scheerer—lot No. *L* Scheerer's addition.

Nicholas & Caroline Windermuth—lot No. 2 Scheerer's addition.

Julia Scheerer—lot No. 3 Scheerer's addition.

Jacob Scheerer—lot No. 4 Scheerer's addition.

Hannah Schaefer—lot No. 5 Sc*ah*efer's addition.

Hannah Schaefer—lot No. 6 Schaefer's addition.

David & Caroline Ager—lot No. 7 Schaefer's addition.

Hannah Schaefer—lot No. 8 Sch*ea*fer's addition.

Hannah Schaefer—lot No. 9 Schaefer's addition.

Hannah Schaefer—lot No. 10 Schaefer's addition.

Hannah Schaefer—lot No. 11 Schaefer's addition.

Hannah Schaefer—lot No. 12 Schaefer's addition.

Hannah Schaefer—lot No. 13 Schaefer's addition.

Hannah Schaefer—lot No. 14 Schaefer's addition.

Hannah Schaefer—lot No. 15 Schaefer's addition.

30 Hannah Schaefer—lot No. 16 Schaefer's addition.

Hannah Schaefer—lot No. 17 Schaefer's addition.

Wm. H. Drover—part southeast — section 15 township 28 north, range 9 east, commencing at a p-int 50 feet south 74 degrees west from the southwest corner of lot No. 6 in Drover's 3rd subdivision; thence south 74 degrees west 192.8 feet; thence north 16 degrees, west 150 feet; thence north 74 degrees to the west line of South Lafontain street; thence south 16 degrees east along the west line of South Lafontain street thence south 16 degrees east along the said west line to the place of beginning.

Hannah Drover—Part southeast — section 15 township 28 north range 9 east, commencing at a point 242.8 feet south 74 degrees west from the southwest corner of lot No. 6, in Drover's 3rd subdivision; thence south 74 degrees west 252 feet, to the east line of Lucien street; thence north 16 degrees west 150 feet to beginning.

Julia Scheerer—West part lot No. 2 Drover's outlot.

Anna E. Ward—East half lot No. 3 Drover's outlot.

Louis Myers—West half of lot No. 3 Drover's outlot.

And, be it further resolved, That the city civil engineer shall duly advertise for three weeks in a newspaper of general circulation announcing therein that on the day named in said notice that proposals to construct said work will be received by said engineer and common council — after said contract is let, said engineer shall set the grade stakes and superintend the said construction and such
31 engineer shall announce in said notice that all bids will be
received up to 7 p. m. of September 18, 1893, at which time the common council will open and award or reject the same.

Said improvements to be made under and according to the provisions of the statute in such cases made and provided and in accordance with the plans and specifications therefor and under the supervision of, and to the satisfaction of the city civil engineer; and be it further

Resolved, That the city clerk give notice to the property-owners along the line of the said proposed improvement by publication in the Daily Democrat a daily newspaper of general circulation in said county on the 24th and 31st days of August 1893, for such property-owners to appear at the chambers of the common council in the city of Huntington, at a meeting of said common council to be held on the 11th day of September 1893, at 7.30 p. m. and make any objection, they or any of them may have to the necessity for said proposed improvements.

Submitted by—

GEORGE BECK,
Councilman from 3rd Ward.

Witness my hand and official seal of the city of Huntington on this 24th day of August 1893.

WM. SCHWARTZ, *City Clerk.*

I, John V. Morgan being duly sworn upon oath says that I am the book-keeper of the Huntington Democrat, that the same is a daily newspaper of general circulation, and printed in the county and State aforesaid; that the annexed copy of a resolution was published in said newspaper 1 consecutive weeks as follows August 24, 1893.

JOHN V. MORGAN.

Subscribed and sworn to this 25 day of September 1893.
ZACH. T. DUNGAN, *Mayor.*

32 Printer's fees, $15.40.

Proof of Publication.

A copy.

Notice to Contractors.

Notice is hereby given that sealed proposals will be received by the city civil engineer and common council of the city of Huntington, Indiana at the office of the city clerk until 7 o'clock p. m. September 26, 1893, for furnishing the necessary labor and material for the paving of William street from the west line of Charles street to the west line of Clark street with vitrified paving brick or blocks and for setting curb on each side of such improvement. Bidders will be required to furnish samples of at least three brick or blocks of the material bid upon, and file the same with the city civil engineer at the time of filing the bid, according to the plans and specifications therefor on file in the office of the city civil engineer.

Each bid must be accompanied by a bond or certified check of five hundred dollars with at least one good surety; that if the bid is accepted a contract will be entered into and the performance of it properly secured.

Bidders are required to use the printed forms which will be furnished on application.

The common council reserves the right to reject each or all bids.

By order of the common council.

HENRY H. WAGONER,
City Civil Engineer.

Aug. 29, Sept. 5, 12.

I, John V. Morgan, being duly sworn, on my oath say that I am bookkeeper of the Huntington Democrat, that the same is a daily 33 newspaper of general circulation, and printed in the county and State aforesaid; that the annexed copy of notice to contractors was published in said newspaper as follows: August 29, September 5 and 12.

JOHN V. MORGAN.

Subscribed and sworn to this 25th day of September 1893.

ZACH. T. DUNGAN.

Printer's fees—$5.44.

Chamber of the common council of the city of Huntington, Ind.

MONDAY, *September* 25, 1893—7.30 o'clock p. m.

Council met in regular session.

Present: His honor Zach. T. Dungan and the following councilmen:

Beck, Johnson, Collins, Dimond, Levy, Wilkerson—6.

Absent: None.

Minutes of the previous meeting read and approved.

Objections of Hannah Schaefer to the Improvement of William Street with Brick.

Mr. H. B. Sayler and S. M. Sayler being present appeared for Mrs. Hannah Schaefer and offered the following written objections to the paving of William street with brick.

In the matter of the improvement of William street in the city of Huntington, Indiana, Hannah Schaefer owner of lots No. 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 in Schaefer's addition to the city of Huntington, Indiana, and a tract fronting on William street in said city 252 feet wide extending east from said addition object- to the proposed imprevement of William street because the cost of said imprevement will greatly excede the benefit of said imprevement.

2nd. Said proposed improvement is not necessary to said real estate and is not of public utility to said real estate.

Dated Sept. 25, 1893.

SAYLER & SAYLER,
Att'ys for Hannah Schaefer.

Refusal to Hear Objections.

After some discussion on the matter Mr. Levy moved to place the communication on file.

34 Which motion was concurred in.

Chamber of common council of the city of Huntington, Ind.

WEDNESDAY, *September* 26, 1893—7.30 o'clock p. m.

Council met in adjourned session.

Present: His honor Mayor Zach. T. Dungan in the chair and the following members — council: Beck, Collins, Dimond, Johnson, Levy, Wilkerson—6.

Absent: None.

Motion to Go into Com. of Whole to Receive Bids.

Dimond now moved that the council now go into the committee of the whole for the purpose of opening bids and awarding contracts on William and Washington imprevements. Concurred in.

Report of Com. of Whole Awarding Contract.

Report of the committee of the whole awarding contract of paving William street with brick.

To the mayor and common council:

The committee of the whole to whom was referred the question of letting the contract for the paving of Washington and William streets have had the same under consideration and have selected the Hollowood unglased block as the material, and we have awarded the contract for William street to Werling and Draper at $1.37 per square yard and the curb at .20 and .40 cents per lineal foot and the contract for Washington be awarded to Fisher & Keefer, at $1.37½ cts. per square yard and .50 cts. per lineal foot for the curb in each of the above cases the above parties were the best and lowest bidders and we recommend that the contract be so awarded and the city attorney be authorized to prepare contract and bond and have the same executed.

LEOPOLD LEVY,
Chairman Committee of Whole.

Mr. Collins moved the report of the committee of the whole
35 *to* be adopted. Which motion was concurred in.

Chamber of the common council of the city of Huntington, Ind.

MONDAY, *October* 9, 1893—7.30 o'clock p. m.

Council met in regular session.

Present: His honor Mayor Z. T. Dungan in the chair and the following members — council:

Beck, Collins, Dimond, Johnson Wilkerson—5

Absent: Levy—1

Minutes of the regular and adjourned session read and approved.

Communication from Hannah Schaefer in the matter of paving William street with brick.

Protest of Hannah Schaefer Against Improving William St. with Brick.

To the honorable mayor and common council:

Hannah Schaefer the undersigned owner of lots 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 in Schaefer's addition to the city of Huntington, in Huntington county, Indiana, and one unplatted tract 252 feet fronting on William street in said city and the southwest corner thereof being the southeast corner of Lucin street hereby protest- *to* the receiving of bids for and the letting of contracts for the improvement of said William street by paving the said street with brick for the following reasons:

1st. That said improvement as contemplated and for which bids — for the imprevement of said William street by paving with brick is not of public utility. (?)

2nd. That said improvement as proposed is not of necessity.

3rd. That the common council on the 25th day of September 1893, the date set forth in the notice to property-owners to make
objections to the necessity for the said proposed improvement
36 refused to give the undersigned a hearing on her objections
which she filed, by the hearing of testimony, opinions, or
statements, in her behalf either under oath or otherwise by any person not the owner of real estate abutting on said William street or by any other person in her behalf.

4th. That the cost of the proposed improvement will greatly be in excess of the benefit to all of the real estate or any parcel of said real estate or any number of parcels of said real estate all of which objections and grounds of protest *and protest* she applies to each several tract of real estate herein set forth.

Witness my hand and seal this 26th day of September 1893. Filed September 26 '93 2.50 p. m. at city clerk's office.

HANNAH SCHAEFER.

On motion of Mr. Beck the same was received and ordered placed on file. Which motion was concurred in.

Report of City Att'y Preparing Contract for Street Paving.

Report of city attorney preparing a contract for street paving.

To the honorable mayor and council.

GENTLEMEN: In connection with the city civil engineer I prepare a contract for street paving and have caused a number to be printed. I believe the contract as proposed to be in all things such as will protect the cit*ie*'s interest. I have also had prepared and had signed the contracts and bonds for the improvement of William and Washington streets by paving; I consider a $10,000 bond was sufficient and exacted that amount in each case. The contract will be read to you and the sureties on the bond submitted for your approval.

J. B. KENNER,
City Attorney.

On motion of Beck the same was ordered placed on file.
37 Motion concurred in.

Contract & Bond for Improvement of William Street with Brick.

Contract and bond of Werling and Draper, in the sum of $10,000, for the paving of William street.

Articles of agreement. Made this 9th day of October A. D. 1893, by and between the city of Huntington, Indiana, by the common council of said city thereunto duly authorized by resolution of said council adopted on the 26th day of September 1893, by the city civil engineer H. H. Wagoner and Z. T. Dungan mayor, party of the first part and Julius Werling and Henry Draper contractors party of the second part.

Witnesseth, that whereas an advertisement for sealed proposals for the imprevement of William street from Charles street to Clark street by grading and constructing thereon *an* Hayden block Hallwood block, East Clayton block, fire-block, or hard-burned brick pavement with a broken-stone foundation and sandstone curb was duly made by which proposals for said improvement were to be received at the office of the city clerk of Huntington, Indiana, until 7 o'clock p. m. September 26, 1893.

And whereas, said second party did, at that time, make a sealed proposal or bid to make said improvement which sealed proposal was accepted by the said common council by the resolution above referred to and therein and thereby awarding the contract to said second party in behalf of said city.

Now, therefore, in consideration of the premises and of the money to be paid said second party, as hereinafter provided, said second party does hereby agree and promise to do and perform the matters and things following:

Furnish all the materials and do and perform all the labor and
furnish all machinery, apparatus, transportation and other
38 matters necessary to do said labor, at his own proper cost and
expense, for the improvement of William street from Charles
street to Clark street by grading and constructing thereon a Hall-
wood block pavement with broken-stone foundation and coal-tar
filling and setting a 3 x 16 in. curb and setting the proper amount of
sewer inlets and making connections with sewers in strict accord-
ance with the sepcifications of said imprevements on file in the office
of the city civil engineer, which said specifications the said second
party hereby acknowledges to have read and fully examined. All
of said work to be done, in every respect, in a workmanlike man-
ner and to the satisfaction and acceptance of the engineer of said
work, by the first day of July A. D. 1894; and the said second party
hereby agrees to warrant and guarantee to the said first party the
said imprevement, so by him hereinabove agreed to be made and
constructed, to be and remain in good condition and repair during
and at the completion of a term of five years from the date of the
acceptance of the same by the engineer thereof.

And the said second party hereby consents, stipulates and agrees that said first party shall keep and retain five per cent. of the total sum for said imprevement, at the prices hereinafter stipulated, for said term of five years with full authority which is hereby granted, to expend at any time during said term or at the close thereof, under the direction of the city civil engineer, the whole or any part of the sum so retained, in making necessary repairs upon said imprevement.

Provided, however, that the repairs aforesaid, so found necessary,
are on account, or grow out of any defects, in material and work-
manship or by reason of any default or neglect on the part of
39 second party, or his agents or employés, or of any person
acting under him or them, either in the construction of said
improvement, or in making repairs indicated after ten days' notice
in writing from said first party so to do. The said first party hereby
agreeing that at the end of said term of said five years the said
improvement being certified by the engineer to be in good repair,
the amount so retained or any balance thereof shall be paid to said
second party, with interest at the rate of six per cent. per annum,
from the date of approval for payment by the common council of
the final estimate of the C. C. engineer of the cost of said construc-
tion of said improvement under this contract, payable annually, at
the close of each year of the term of guaranty of the said improve-
ment; provided, that before any installment of said interest shall
be due or payable, there shall be filed in the office of the city clerk,
a certificate signed by the city civil engineer that the said improve-

ment is then, and has theretofore, been kept in good repair, by said second party as stipulated and agreed in this contract and according to the terms of the guarantee aforesaid.

In consideration of the full and faithful performance of the said contract agreement and promises of the second party for the improvement of said William street as hereinbefore provided the said first party doth hereby agree with and promise to allow to said second party, for the labor performed and materials furnished under this contract, the prices named in his said bid which are as follows, to wit:

For grading and constructing a Hallwood block paved street in place, complete, per square yard—$1.37

With tar-filling stone foundation.

For furnishing and setting a 16-in. curbstone, per lineal foot,—
20 cents. Payments to be made to second party upon final
40 estimates of the city civil engineer, after the work is completed and bonds sold, subject however, to the reservation hereinbefore provided for.

In witness whereof, the parties hereto have hereunto set their hands, the first party by the city civil engineer and mayor, thereunto duly authorized as aforesaid, and the second party Julius Werling and Henry Draper this 9th day of October, 1893.

JULIUS WERLING.
HENRY DRAPER.
HENRY WAGONER, *C. C. Eng.*
ZACH. T. DUNGAN, *Mayor.*

Bond.

In the consideration of the acceptance of the proposals of said second party by the said first party, and of the entering into of the foregoing contract, by and between said parties, of the payment as set out in the above contract said first party, we, Julius Werling and Henry Draper as principals, and Wm. H. Baker and Jos. Amiss as sureties, do jointly and severally agree with and promise to said first party to guarantee, and we do hereby jointly and severally guarantee to said first party that said second party will well and truly perform each and all of the terms of said contract; and on default of said second party in that regard, we will be liable and will pay to said first party for any and all loss, cost, damage and expense, which said second party is or would be liable for under said contract to the extent of ten thousand dollars.

JULIUS WERLING.
HENRY DRAPER.
J. G. AMISS.
WM. H. BAKER.

On motion of Beck the bond was accepted and adopted. Concurred in.

41 Chamber of common council of the city of Huntington, Indiana.

THURSDAY, *March* 15, 1894—7.30 o'clock p. m.

The council met in adjourned session.

Present: His honor Mayor Z. T. Dungan in the chair and the following members — council: Beck, Collins, Dimond, Johnson, Levy—5.

Absent: Wilkerson—1.

Final Estimate of Civil Engineer.

The city civil engineer's final estimate for the improvement of William street from the west line of Charles street to the west line of Clark street was submitted.

On motion of Dimond the report was referred to the committee of the whole and the clerk instructed to give two weeks' notice in the Daily Democrat to all the property-owners who are assessed for the paving of William street that a final report and assessment has been made and is now on file in the city clerk's office and that the committee of the whole will hold a meeting in the council chambers on Monday evening the 9th day of April, 1894, at 7 o'clock p. m. to hear any objections to the assessment or any objection to such report any one may have to make.

Concurred in.

Notice to Property-owners of Engineer's Final Estimate.

Proof of publication.

(Copy.)

Notice.

STATE OF INDIANA,
City of Huntington, Indiana. }

Notice is hereby given that the city civil engineer has filed in the office of the city clerk his final report of assessment of the improvement of William street from the west line of Charles street to the west line of Clark street in the city of Huntington, showing the amount that should be assessed against the lots and parcels of ground benefitted by said improvement, and the owners of said lots and parcels of ground are hereby notified that said report is now
42 on file with city clerk's office and that said report will be
heard and considered on the 9th day of April 1894, at 7.30 o'clock p. m. by a committee appointed by the common council of said city and that all persons interested in or any way affected by said improvement shall appear at said time and place and make any objections they or any of them may have to the confirmation of said report.

Witness my hand and official seal of the city of Huntington, Indiana, the 11th day of March, 1894.

[SEAL.] WM. SCHWARTZ, *City Clerk.*

STATE OF INDIANA, } ss:
Huntington County, }

I, John V. Morgan, being duly sworn on oath says that I am book-keeper of the Huntington Democrat, that the same is a daily and weekly newspaper of general circulation, and printed in the county and State aforesaid; that the annexed copy of notice of final report of assessment on William street was published in said newspaper 2 consecutive weeks as follows: March 17 and 24, 1894.

JOHN V. MORGAN.

Subscribed and sworn to this 21st day of April, 1894.

ZACH. T. DUNGAN, *Mayor.*

Printer's fees—$2.84.

Chamber of the common council of the city of Huntington, Ind.

MONDAY, *April* 9, 1894—7.30 o'clock p. m.

The common council met in regular session.

Present: His honor Mayor Zach. T. Dungan in the chair and the following members — council:

43 Beck, Collins, Dimond, Johnson, Levy, Wilkerson—6.

Absent: None.

Minutes of previous meeting read and approved.

Objections of Hannah Schaefer.

Objections of Hannah Schaefer against the adoption of the final report and assessment of William street *was* read as follows:

Before the common council of the city of Huntington.

In the matter of the improvement of William street.

Hannah Schaefer, the owner of lots 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 and 250 feet front from the east line of Lucian street east objects to the adoption of the report of benefits of said improvement because the street is not built and completed according to the contract and specifications for such improvement in this

1st. Said street is not to the proper grade as set out in the specification and contract.

2nd. That the contract has not been complied with in the placing of broken stone under the sand and brick therein.

3rd. That the street is not properly constructed according to the contract and specifications.

4th. That said improvement is not of public necessity or utility.

5th. That said benefits as set — in said report are exorbitant.

6th. That the benefits are not equal to the costs of said improvement.

HANNAH SCHAEFER,
Per M. B. SCHAEFER, *Ag't.*

On motion of Wilkerson the same was referred to the committee of the whole. Which motion was concurred in.

On motion of —— —— the common council went into the committee of the whole to consider the city civil engineer's report and the remonstrance of Hannah Schaefer. 44

Report of Com. of Whole on Objections of Hannah Schaefer.

Report of the committee of the whole.

To the mayor and common council:

Your committee of the whole to whom was referred the final estimate of the city civil engineer and the remonstrance of Mrs. Schaefer, have partially considered the same but have not concluded the same and ask leave to sit tomorrow, April 10, in the evening.

LEOPOLD LEVY,
Chairman of Committee of Whole.

Which report was adopted with leave to sit tomorrow evening.

Chamber of the common council of the city of Huntington, Indiana.

TUESDAY, *April* 10, 1894—7.30 o'clock p. m.

Council met in adjourned session.

Present: His honor Mayor Z. T. Dungan in the chair, and the following members — council: Beck, Collins, Dimond, Johnson, Levy—5.

Absent: Wilkerson—1.

Mr. Collins then moved the council go out a committee of the whole to consider the final report and estimate on William street, together with the remonstrance of Mrs. Schaefer.

Concurred in.

Rep't Continued.

HUNTINGTON, INDIANA, *April* 10, 1894.

To the mayor and common council:

Your committee of the whole to whom was referred the final report and estimate on William street together with the remonstrance or objections of Mrs. Schaefer; report that they met on April 10, 1894 after hearing evidence upon the specifications of the remonstrances and fully considering said report we are of the opinion that such report is correct and they recommend that said estimate be approved and confirmed and that the resolution accompanying this report be adopted.

45 Respectfully submitted,

TIMOTHY COLLINS,
Chairman Committee of the Whole.

On motion of Johnson the report was adopted and concurred in.

Final Estimate of the City Civil Engineer.

To the honorable mayor and common council of the city of Huntington, Indiana.

GENTLEMEN: The following is the final estimate of the cost and expenses, at the contract price, of the improvement by curb and paving with Hallwood blocks of William street, of said city, from the west line of Charles street to the west line of Clark street. The entire cost of the improvement is as follows, viz: For curb $1063.80. For paving $12080.85. Total cost $13144.65.

The whole length of said street between the points mentioned is 2478½ feet. The entire number of feet of ground fronting on or adjoining said street — $4460\frac{1}{20}$ ft. between the points mentioned. The average cost per running front foot of the whole length except intersections of said street is $2.48⅓.

I hereto annex a report in detail, including the name of each property-owner on said street between the points mentioned, the number of front feet owner by the respective property-owners on
that part of the street so improved, the amount of such costs
46 for improvements due upon each lot or parcel of ground
bordering on said street, and a full description, together with the owner's name, of each lot or parcel of ground bordering on said part of said street so improved.

Huntington, Ind., March 15, 1894.

H. H. WAGONER,
City Civil Engineer.

47

Name of owner.	No. of lot.		No. of front feet.	Average cost per running front foot.	Total cost.	Amount of assessment against property.
D. Chambers	83	Drover's 1st add	66	2.48⅓	163 90	163 90
Anna F. & Herman W. Drover	84	" "	66		163 90	163 90
Susanna Wilhelm	85	" "	66		163 90	163 90
Mary Drover	86	" "	66		163 90	163 90
Mary Drover	87	" "	66		163 90	163 90
Christena Urshel	88	" "	66		163 90	163 90
Christena Urshel	89	" "	66		163 90	163 90
Susanna Wilhelm	90	" "	66		163 90	163 90
Barbara Seber	91	" "	66		163 90	163 90
A. G. Rosebrough	92	" "	66		163 90	163 90
Susanna Wilhelm	93	" "	66		163 90	163 90
William W. Swafford	94	" "	66		163 90	163 90
I. H. Heaston	95	" "	66		163 90	163 90
I. H. Heaston	96	" "	66		163 90	163 90
Homer Snyder	97	" "	66		163 90	163 90
Francis S. & K. Snyder	98	" "	66		163 90	163 90
Cyrus L. Mingus	99	" "	66		163 90	163 90
Cyrus L. Mingus	100	" "	86		213 57	213 57
Wm. A. Zeller	1	Drover's 3rd add	66		163 90	163 90
Wm. A. Zeller	2	" "	66		163 90	163 90
Nathan Kuhlman W. ⅓ of	3	" "	22		54 63	54 63
M. J. E. & J. W. & Daisy Kuhlman E. ⅔ of	3	" "	44		109 27	109 27
Lenora Bridge	4	" "	66		163 90	163 90
George Zitzer	5	" "	66		163 90	163 90
Edna B. Fetter	6	" "	66		163 90	163 90
Mahala Emerick	1	Drover's 4th add	66		163 90	163 90
Amanda Mohn, trustee	2	" "	66		163 90	163 90
B. F. & L. C. Billiter	9	" "	66		163 90	163 90
B. F. & L. C. Billiter	10	" "	66		163 90	163 90
Hezekiah Kilander	11	" "	136		337 74	337 74
Jacob Boose & Wm. Stults	1	John's add	66		163 90	163 90
Lavina Little	2	" "	78⅔		195 36	195 36

Wm. John	3	" "	66½		164 73	164 73
Julia Scheerer	1	Scheerer's add	56		139 07	139 07
Nicholas & Caroline Windermuth	2	" "	60		149 00	149 00
Julia Scheerer	3	" "	61		151 49	151 49
Jacob C. Scheerer	4	" "	64		158 94	158 94
Hannah Schaefer	5	Schaefer's add	64		158 94	158 94
Hannah Schaefer	6	" "	60		149 00	149 00
Daniel & Caroline Ager	7	" "	60		149 00	149 00
Hannah Schaefer	8	" "	60		149 00	149 00
Hannah Schaefer	9	" "	60		149 00	149 00
Hannah Schaefer	10	" "	60		149 00	149 00
Hannah Schaefer	11	" "	60		149 00	149 00
Hannah Schaefer	12	" "	60		149 00	149 00
Hannah Schaefer	13	" "	60		149 00	149 00
Hannah Schaefer	14	" "	60		149 00	149 00
Hannah Schaefer	15	" "	60		149 00	149 00
Hannah Schaefer	16	" "	60		149 00	149 00
Hannah Schaefer	17	" "	67½		160 18	160 18
School, city of Huntington	Com. at the S. W. cor. of William and Milligan street; thence w'ward on William St. 152 ft.; thence s'ward at right angles 150 ft.; thence e'ward at right angles to William St.; n'ward on William St. to the place of beginning		152		377 47	377 47
Wm. H. Drover	Com. at the N. W. cor. of William & Lafontain St.; thence westward on William St. 192$\frac{5}{16}$ ft.; thence northward at right angles 150 ft.; thence eastward at right angles 192$\frac{5}{16}$ ft.; thence southward at right angles 150 feet. to the place of beginning, being a part of sec. 15, T. 28 N., R. 9 E.		192$\frac{5}{16}$		478 79	478 79
Hannah (Drover) Schaefer	Com. on the N. line of William St. 192$\frac{5}{16}$ ft. n'ward from Lafontain St.; thence w'ward along William St. 252 ft.; thence n'ward at right angles 150 ft.; thence e'ward 252 ft.; thence s'ward 150 ft. to place of beginning, being a part of sec. 15, T. 28 N., R. 9 E.		252		625 80	625 80
Julia Scheerer	All of Drover's outlot No. 2 lying west of the west line of Cline St.		158		392 37	392 37
Anna E. Ward	The east 176¼ ft. front on William St. of outlot No. 3, Drover's outs.		176¼		437 69	437 69
Louis Myers	The west 218½ ft. front on William St. of Drover's outlots		218½		542 61	542 61
City of Huntington	Street & alley intersection				2,232 70	2,232 70
	Total					13,144 65

H. H. WAGONER, *City Civil Engineer.*

48 *Final Estimate Resolution.*

Resooved by the common council of the city of Huntington, Indiana Thet the report of the committee of the whole of the common council recommending that the final estimate made by the city civil engineer in favor of Draper and Werling pursuant to resolution be and the same is hereby approved.

That the assessments set forth in said estimate are hereby approved and confirmed and there is hereby assessed against the several lots and parcels of ground as described in said final estimate the several amounts set opposite and assessed against the several lots and parcels of ground respectively for and on account of said improvement.

The city clerk is hereby directed to place said assessment- on the city tax duplicate and to charge the same respectively against the lots and several parcels of ground against which they have been assessed as follows, to wit: ten per cent. for each successive year for ten years together with interest on the several amounts so assessed at six per cent. per annum payable semi-annually calculated from the date of the approval of this estimate until the several amounts fall due.

The first ten per cent. of said assessments with interest on the whole from the date of the approval of the estimate shall be due and payable on the first day of May, 1895. The semi-annual interest on the unpaid balance shall be due and payable thereafter at the dates of the semi-annual payment of city taxes to wit: May 1st or November 1st in each year and on the 1st of May 1895 and in each year thereafter on said date one tenth of the principal of said assessment together with the semi-annual interest on the unpaid balance shall be due and payable until all are paid.

Provided, however, That the above provision for extending said
assessment upon the city tax duplicate and collecting the
49 same successively in annual and semi-annual installments of
principal and interest respectively shall apply only to owners
of lots or parcels of ground who shall promise and agree in writing filed with the city clerk of said city that in consideration of having the right to pay his or their assessment in installments they will not make any objection to the illegality or irregularity as to their respective assessments and will pay the same when due with interest thereon not exceeding six per cent.

The said assessment together with interest thereon shall from the date of this approval be a lien upon the several lots and parcels of ground against which they are assessed respectively by the same extent that taxes are a lien upon such property and the said assessments when placed upon the city tax duplicate shall be collected in the same way that city taxes are collected all with assessments not so extended upon the city tax duplicate pursuant to the other provisions shall be at once due and payable and shall be collected by precept and sale as now provided by law.

The proceeds from such assessments as are so placed on the city tax duplicate shall constitute a special fund to be applied to the payment of the costs of said improvement and of the bonds to be issued therefor and no other purpose.

GEORGE BECK.

Collins moved the adoption of the resolution.

Those voting in the affirmative were:

Beck, Collins, Dimond, Johnson, Levy—5.

Those voting in the negative—None.

Absent—Wilkerson—1.

So the resolution was therefore adopted.

I move that the city clerk be ordered to advertise for two weeks
one insertion in the daily once a week that 14,000 of William
50 Street bonds drawing 6 per cent. interest will be sold and
that they will be offered for two weeks and sealed bids will
be received until the 28th of April, 1894 at 7.30 p. m. at which time
the bids will be opened the council reserving the right to reject any
and all bids.

J. F. JOHNSON.

Concurred in.

Proof of Publication.

Copy.

Notice of Sale of Bonds.

Notice is hereby given that there will be bids received for improvement bonds of the city of Huntington, Indiana, up until the 28th day of April 1894, at 7.30 o'clock p. m. at the city clerk's office, of the city of Huntington, Indiana, said bids to be sealed.

There will be bonds to the amount of from $12,000 to $14,000 in denominations of $500 and $300 bearing 6 per cent. — payable semi-annually and maturing in one to ten years. The common council reserves the right to reject any and all bids.

WM. SCHWARTZ, *City Clerk.*

STATE OF INDIANA, } ss:
City of Huntington, }

I, Thad Butler on oath, state that I am manager of the Evening Herald, that the same is a daily newspaper of general circulation in the city and State aforesaid, that the annexed printed copy of notice of sale of bonds was published in said newspaper 2 insertions on the following days: April 11, April 18, 1894.

THAD BUTLER.

Subscribed and sworn to this 4th day of May, 1894.

ZACH. T. DUNGAN, *Mayor.*

Printer's fees, $2.10.

51 *Waiver.*

We the undersigned owners of real estate abutting upon William street from Charles street to Clark street severally promise and agree in consideration of having the right to pay in installments our respective assessments for improvement of said William street as provided by resolution passed August 23, 1893, that we will not make any objection to the illegality or irregularity as to our respective assessments and will pay the same when due with interest thereon at such rate not to exceed six per cent. as shall by ordinance or resolution of the common council, be prescribed and required.

Name of owner.	Description of lot or parcel of ground.	No. lot.	No. front feet.	Average cost.	Total cost.
M. H. Kuhlman	Drover's 3rd add., W. $\frac{1}{2}$..	3	22	$2.48\frac{1}{3}$	54.63
M. H. Kuhlman	" " " E. $\frac{1}{2}$..	3	44	"	109.27
C. L. Mingus	" 1st "	99	66	"	163.90
C. L. Mingus	" " "	100	86	"	213.57
David Chambers, by Wm. E. Chambers.	" " "	83	66	"	163.90
Leonora Bridge...........	" 3rd "	4	66	"	163.90
I. H. Heaston.	" 1st "	95	66	"	163.90
I. H. Heaston............	" " "	96	66	"	163.90
Daniel & Caroline Ager....	Schaefer's add...........	7	60	"	149.00
Jacob Boos	John's add.	1	66	"	163.90
Mary Drover, by Simon Drover.	Drover's 1st add........	86	66	"	163.90
Mary Drover, by Simon Drover.	" " "	87	66	"	163.90
Amanda Mohn, trustee, by E. E. Allen, ag't.	" 4th "	2	66	"	163.90
A. J. Rosebrough	" 1st "	92	66	"	163.90
Julia Scheerer	Scheerer's add..........	1	56	"	139.07
William John.............	John's "	3	$66\frac{1}{3}$	"	164.73
Lavina Little	" "	2	$78\frac{2}{3}$	"	195.39
52 H. Kilander	Drover's 4th add........	11	136	$2.48\frac{1}{3}$	337.74
Kate Wright & Francis Snyder.	" 1st "	98	66	"	163.90
Christenna Urshell.........	" " "	88	66	"	163.90
Christenna Urshell.........	" " "	89	66	"	163.90
Wm. H. Drover...........	Pt. sec. 15, tp. 28 N., R. 9 E.	.....	$192\frac{8}{10}$	"	478.79
George Zitzer.............	Drover's 3rd add........	5	66	"	163.90
W. W. Swafford	" 1st "	94	66	"	163.90
Anna E. Ward, by J. O. Ward.	Outlot 3, Drover's outlots.	.....	$176\frac{1}{4}$	"	437.69
Mahala Emerick..........	Drover's 4th add........	1	66	"	163.90
Susan Wilhelm, by John Wilhelm.	" 1st "	85	66	"	163.90
Susan Wilhelm, by John Wilhelm.	" " "	90	66	"	163.90
Susan Wilhelm, by John Wilhelm.	" " "	93	66	"	163.90
W. A. Zeller..............	" 3rd "	1	66	"	163.90
W. A. Zeller	" " "	2	66	"	163.90
Barbara Seber	" 1st "	91	66	"	163.90
School, city of Huntington, by D. Yingling, pres. school board, for school property described in city civil engineer's report.		.....	152	"	377.47
City of Huntington, by Z. T. Dungan, mayor, street and alley crossings.		....	......	......	2,232.70

53 Chamber of the common council of the city of Huntington, Indiana.

SATURDAY EVENING, *April* 28, 1894—7.30 o'clock p. m.

Council met in adjourned session.

Present: His honor Mayor Z. T. Dungan in the chair and the following members — council: Beck, Collins, Dimond, Johnson, Levy, Wilkerson—6.

Absent: None.

Wilkerson moved to go into a committee of the whole to consider the sale of William Street improvement bonds and to consider bids on North Jefferson sewer and pavement.

Motion concurred in.

Report on Bonds.

Report of the committee of the whole.

HUNTINGTON, INDIANA, *April* 28, 1894.

To the honorable mayor and common council:

Your committee of the whole to whom was referred the bids for the sale of William Street improvement bonds report that we have examined the several bids and recommend that the bids of all be rejected except the bid of Dietz, Denison & Prior, of Cleveland, Ohio, and that they be awarded the bonds at their bid—par, interest and $96 premium being a total of $8,596 and interest.

The city to furnish lithograph bonds and transcript.

Respectfully submitted.

LEOPOLD LEVY,
Chairman Committee of the Whole.

On motion of Wilkerson the report of the committee of the whole was adopted, and the mayor was instructed to notify Dietz, Denison — Prior of the acceptance of their bid, for the William Street improvement bonds.

— William Schwartz — of all the proceedings had and held
54 before the common council of said city in the matter of the
improvement of William street in the city of Huntington, Indiana, from Charles street to Clark street as appears of record from the proceedings of said council in the records now in my official possession as said clerk and—

55 Chambers of the common council of the city of Huntington, Ind.

MAY 14, 1894.

Common council met in regular session with Mayor Z. T. Dungan in the chair and the following members — council:

Beck, Collins, Dimond, Gibson, Johnson, Wright—6.

Absent: None.

Affidavit for Precept.

STATE OF INDIANA,
Huntington County, } *ss:*

Before me, Zach. T. Dungan, mayor of the city of Huntington in said county and State, personally appeared Henry Draper & Julius Werling and being duly sworn upon their oaths say, that heretofore, to wit · on the 15th day of March, A. D. 1894, an estimate was duly allowed and certified to them by Henry H. Wagoner, city civil engineer of said city, for work done by them under this certain contract with said city for paving William street. That by said estimate it appears that the sum of nine hundred and five dollars and eighteen cents is assessed against lots 11, 13, 14, 15, 16 & 17 in Schaefer's addition, city of Huntington, Huntington county, Indiana, owned by Hannah Schaefer of which sum — dollars and — cents has been paid, and there now remains due and unpaid the sum of nine hundred and five dollars and eighteen cents.

That the work estimated has been done according to contract, and the said estimate has been duly made in accordance with an order of the common council of the city of Huntington.

HENRY D. DRAPER.
JULIUS H. WERLING.

Sworn and subscribed to before me, this 14th day of May, A. D., 1894.

ZACH. T. DUNGAN.

56 Precept issued and delivered to city treasurer this 21st day of May, A. D. 1894.

WM. SCHWARTZ, *City Clerk.*

On motion of Collins the clerk was instructed to issue precept on affidavit and deliver the same to the treasurer for collection.

Which motion was concurred in, and precept ordered.

57 *Precept.*

STATE OF INDIANA,
Huntington County, } *ss:*

The City of Huntington to John M. Hargrove, treasurer of said city:

Whereas, it appears by the affidavit of Henry D. Draper and Julius H. Werling duly certified and filed with the clerk of said city, that an estimate for work done by said Henry D. Draper and Julius Werling under their certain contract with the said city, for the paving of William street with brick was, on the 15th day of March, 1894, duly allowed and certified to them by the city civil engineer of said city, by which said estimate it appears that the sum of nine hundred dollars and eighteen cents is due to the said Draper & Werling from Hannah Schaefer, being the amount assessed against lots 11-13-14-15-16 and 17 in Schaefer's add. owned by said Hannah Schaefer.

And whereas, it further appears by the said affidavit that the work estimated has been done according to contract, and that said estimate was duly made, and that there now remains unpaid the sum of nine hundred dollars and eighteen cents, so assessed as aforesaid, and that the said sum is still due and unpaid.

Now, therefore, you are hereby commanded to make said sum of nine hundred dollars and eighteen cents, by demanding payment thereof from the said Hannah Schaefer and in default of payment thereof within twenty days after such demand, that you, within ten days after the expiration of twenty days, lay this precept upon the premises hereinbefore described, and sell the same, or a sufficient part thereof, to satisfy said assessment and costs of this writ; and of your proceedings herein, and of this writ, make due return to the clerk of said city, within three months next hereafter.

Witness my hand and the corporate seal of the city of Huntington, this 17th day of May A. D. 1894.

ZACH. T. DUNGAN, *Mayor*.

Attest: WM. SCHWARTZ, *City Clerk*.

58 Chamber of common council of the city of Huntington, Indiana.

JUNE 11, 1894.

Council met in regular session with Z. T. Dungan, mayor presiding and the following councilmen present:

Beck, Collins, Dimond, Gibson, Johnson, Wright—6.

Absent: None.

HUNTINGTON, INDIANA, *June* 11, 1894.

To the honorable mayor and common council:

Your committee on finance to whom was referred the matter of the sale of William Street bonds report that we collected

from such sale being	$8,636.50
This includes int. from March 15 to June 11.	
Retained the guarantee	650.00
We paid Draper and Werling contractors	7,969.03
We paid for exchange	11.90
Balance turned over to treasurer	655.57

We recommend that an order be drawn for $7,969.03 to pay the Draper and Werling amount and cancelled and also an order in favor of the finance committee for exchange $11.90.

Respectfully submitted.

T. COLLINS,
M. G. WRIGHT,
C. S. GIBSON,
Committee on Finance.

On motion of Dimond the report was concurred in.

Comes now Hannah Schaefer, and files her appeal bond in these words.

59 *City Clerk's Certificate.*

Clerk's certificate.

STATE OF INDIANA,
Huntington County, City of Huntington, } *ss:*

I, William Schwartz, clerk of the city of Huntington, de hereby certify that the foregoing, to which this is attached, is a full, true, perfect and a complete copy of action of council and all matters connected with the improvement of William street in the city of Huntington, as appears from the original on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said city of Huntington, this 4th day of August, 1894.

WM. SCHWARTZ,
City Clerk of Huntington.

60 And afterwards to wit at a regular term of the circuit court of Huntington county, Indiana, begun and held at the courthouse in the city of Huntington, in said county and State on Monday the 7th day of September, 1896, the same being the time fixed by law for the holding a term of said court and before Hon. Jabez T. Cox of the 51st judicial circuit of Indiana and special judge of the Huntington circuit court of Indiana the following proceedings were had in the above-entitled cause and entered of record in the order books of said court on the dates respectively indicated to wit:

MONDAY MORNING, *November* 23, 1896—67th Day.

Court met pursuant to adjournment.

And the Honorable Jabez T. Cox judge as aforesaid now files the following appointment, to wit:

Appointment of Hon. J. T. Cox Judge, etc.

STATE OF INDIANA,
Huntington County, } *ss:*

Huntington Circuit Court, Sept. Term, 1896.

I, Charles W. Watkins, judge of the 56th judicial circuit of Indiana and *ex officio* judge of the Huntington circuit court of Indiana having been of counsel in the causes heretofore assigned to Hon. Jabez T. Cox judge of the 51st judicial circuit of Indiana at a former term do hereby recall and reappoint him as special judge of said court to try such causes remaining on the docket of said court and in addition thereto all the other causes and matter that may be brought before him by agreement during the 12th, 13th, 14th, 15th weeks of the September term 1896 of said court.

In witness whereof I have hereunto set my hand the 23rd day of November 1896.

C. W. WATKINS, *Judge.*

61 MONDAY, *December* 7, 1896—79th Day.

THE CITY OF HUNTINGTON
v.
MARTIN B. SCHAEFER ET AL. } No. 5616.

Come the parties by their attorneys and the plaintiff files its motion to dismiss the appeal herein, to wit:

Motion to Dismiss Appeal.

In the Huntington Circuit Court, September Term, 1896.

THE CITY OF HUNTINGTON
v.
HANNAH SCHAEFER. }

Comes now the City of Huntington and moves the court to dismiss the appeal herein for the following reasons:

1st. That the said appeal was not taken or perfected within the time allowed by law.

2nd. That there is no sufficient bond on file.

3rd. That said bond was never approved by the common council of said city, and therefore there could be no appeal.

4th. For the reason that there is no appeal from the action of the common council in making assessments for street purposes.

FRANCE & DUNGAN,
Att'ys for City.

And afterwards, to wit at a regular term of the circuit court of Huntington county in the State of Indiana, begun and held at the court-house in the city of Huntington, in said county and State on Monday the 13th day of April 1897, the same being the time fixed by law for holding a term of said court and before Jabez T. Cox judge of the 51st judicial circuit of Indiana and special judge of the Huntington circuit court of Indiana, the following proceedings were had in the above-entitled cause as the same appears of record in the order books of said court on the dates respectively indicated to wit: 62

FRIDAY MORNING, *April* 23, 1897—11th Day.

Court met pursuant to adjournment.
Present as of yesterday.

Motion to Substitute Draper & Werling for City.

THE CITY OF HUNTINGTON
v.
MARTIN B. SCHAEFER ET AL. } No. 5616.

Come the parties by their attorneys and come also Henry Draper and Julius H. Werling by Hart & Hart their attorneys and represent to the court that they were the contractors employed by the plaintiff to grade and pave William street in said city, and file their motion to substitute them in the place of Huntington to wit:

STATE OF INDIANA, } *ss:*
County of Huntington, }

In the Huntington Circuit Court, April Term, 1897.

HANNAH SCHAEFER
v.
THE CITY OF HUNTINGTON.

Comes now Henry D. Draper and Julius H. Werling and represents to the court that they were the contractors employed by the city of Huntington to grade and pave William street in the city of Huntington and they ask the court to substitute them as parties defendant in place of the City of Huntington.

HART & HART,
Att'ys for Draper & Werling.

And afterwards to wit, at a regular term of the court of Huntington county, in the State of Indiana begun and held at the courthouse in the city of Huntington in said county and State on Monday the 6th day of September 1897, the same being the time fixed
63 by law for the holding a term of said court and before Hon. Jabez T. Cox judge of the 51st judicial circuit of Indiana and special judge of the Huntington circuit of Indiana, the following proceedings were had in the above-entitled cause and entered of record in the order books of said court on the dates respectively indicated to wit:

THURSDAY, *October* 21, 1897—40th Day.

THE CITY OF HUNTINGTON } No. 5616.
v.
MARTIN B. SCHAEFER ET AL.

Come the parties by their attorneys and the plaintiff files its additional motion to dismiss the appeal herein, to wit:

Motion to Dismiss Appeal.

Not on file.

64 FRIDAY, *October* 22, 1897—41st Day.

THE CITY OF HUNTINGTON } No. 5616.
v.
MARTIN B. SCHAEFER ET AL.

Come the parties by their attorneys and the court being sufficiently advised in the premises overrules the motion to dismiss the appeal herein to which the plaintiff excepts.

Motion to Substitute Sustained.

And the court sustains the motion to substitute Julius Werling and Henry Draper as plaintiffs instead of the City of Huntington, and it is ordered by the court that they substitute as parties plaintiffs herein.

And on motion the defendants are ruled to answer.

JOHN WERLING ET AL.
v.
MARTIN B. SCHAEFER ET AL. } No. 5616.

Come the parties by their attorneys and the plaintiffs move the court for a correction of transcript in the words and figures following to wit:

Motion of Hannah Schaefer to Correct Transcript.

STATE OF INDIANA,
Huntington County. }

In the Huntington Circuit Court, January Term, 1897.

THE CITY OF HUNTINGTON
v.
HANNAH SCHAEFER. }

Comes now Hannah Schaefer and on oath shows to the court that on the 23rd day of May, 1894, demand on the precept for the collection of street improvement on William street in the city of Huntington, Indiana, on which the city in the above-entitled cause is suing for a copy of which is filed herewith and made a part hereof was marked A. She further shows to the court on oath that the 65 appeal bond in this cause was filed on the 9th day of June, 1894, with William Schwartz clerk of the city of Huntington, Indiana and by him approved on the 9th day of June, 1894, and his approval entered on the back of said bond. Wherefore she asks that an order be made on the plaintiff for the amendment of her said transcript showing the facts as herein set out.

HANNAH SCHAEFER.

Subscribed and sworn to before me this 26th day of January, 1897.

[SEAL.] SAMUEL M. SAYLER,
Notary Public.

Copy.

Exhibit "A" of Motion to Correct Transcript.

Precept.

STATE OF INDIANA, } ss:
Huntington County, }

The City of Huntington to John M. Hargrove, treasurer of said city:

Whereas it appears by the affidavit of Henry D. Draper and Julius Werling duly certified and filed with the clerk of said city, that an estimate for work done by said Henry D. Draper and Julius H Werling under this certain contract with the said city for the paving of William street with brick, was on the 15th day of March, 1894 duly allowed and certified to them *vy* the city civil engineer of said city by which said estimate it appears that the sum of $900.18 is due to said Draper and Werling from Hanna*d* Schaefer being the amount assessed against lots 11, 13, 14, 15, 16 and 17 in Schaefer's addition owned by said Hannah Schaefer.

An*s* whereas it further appears by said affidavit that the work estimated has been done according to contract, and that said estimate was duly made; and that there now remains unpaid the sum of $900.18 so assessed as aforesaid, and that said sum is still due and unpaid.

Now there*of*re, you are hereby commanded to make said sum

[On the back.]

STATE OF INDIANA, } ss:
Huntington County, }

I, John M. Hargrove, treasurer of the city of Huntington, county and State aforesaid, hereby certify that the within is a true and complete copy of the precept delivered to me May 20, 1894 by the city clerk in the within cause.

JOHN M. HARGROVE,
Per L. BAGLEY, *City Treas.*

Huntington, Ind. May 23, 1892.

66 of $900.18, by demanding payment thereof from the said Hannah Schaefer and in default of payment thereof within twenty days after such demand, that you within ten days after the expiration of twenty days, lay this precept upon the premises hereinbefore described and sell the same or a sufficient part thereof to satisfy said assessment and costs of this writ, and of your proceedings herein, and of this writ make due return to the clerk of said city within three months next hereafter.

Witness my hand and the corporate seal of the city of Huntington, this 17th day of May A. D. 1894.

Z. T. DUNGAN, *Mayor.*

Attest:
[SEAL.] WILLIAM .SCHWARTZ, *City Clerk.*

Motion to Correct Transcript Sustained; Exception.

And the court being advised in the premises sustains said motion to which the defendants except. And afterwards, to wit, at a regular term of the circuit court of Huntington county in the State of Indiana, begun and held at the court-house in the city of Huntington in said county and State on Monday the 6th day of Sept. 1897, the same being the time fixed by law for the holding a term of said court and before Hon. Jabez T. Cox judge of the 51st judicial circuit of Indiana and special judge of the Huntington circuit court of Indiana the following proceedings were had in the above-entitled cause and entered of record in the order books of said court on the date indicated to wit:

Correction of Transcript.

——, 1897, — Day.

JULIUS WERLING ET AL.
v. } 5616.
HANNAH SCHAEFER.

Come the parties by their attorneys and the defendants
67 now file in open court their corrected transcript as follows:

Transcript of the proceedingd of the common council of the city of Huntington, Indiana, had, held, and transacted on the 11th day of June, 1894, in regard to the appeal bond of Hannah Schaefer, appealing from a precept in favor of Draper and Werling, contractors for paving William street.

Be it remembered that on the 11th day of June, 1894, the following matter was had, held, and transacted by the common council of the city of Huntington, Indiana, to wit:

Chamber of the common council of the city of Huntington, Indiana.

MONDAY, *June* 11, 1894—7.30 p. m.

Present: His honor Mayor Zach. T. Dungan in the chair, and the following members: Councilmen Beck, Collins, Dimond, Gibson, Johnson, Wright—6.

Absent: None—0.

Appeal bond of Hannah Schaefer in the matter of William Street improvement was read as follows:

STATE OF INDIANA, }
Huntington County. }

In the matter of the improvement of William street, in Huntington, Huntington county, Indiana.

Whereas Hannah Schaefer, the owner of lots 11, 13, 14, 15, 16 and 17 in Schaefer's addition to the city of Huntington, in Huntington county in the State of Indiana, desires to appeal from the assessment of benefits to her said lots on account of said improvement, now, therefore, we the undersigned hereby jointly and severally bind ourselves to pay whatever judgment is rendered against the said Hannah Schaefer by the Huntington circuit court on accounty of the improvement of said street along said lots.

Witness our hands and seals this 8th day of June, 1894.

HANNAH SCHAEFER.
M. B. SCHAEFER.

Filed and approved June 9, 1894.

WM. SCHWARTZ, *City Clerk.*

68 On motion of Collins the same was referred to the committee on judiciary.

Concurred in.

Z. T. DUNGAN, *Mayor.*

Attest: WILLIAM SCHWARTZ, *City Clerk.*

Clerk's Certificate.

STATE OF INDIANA,
Huntington County, City of Huntington. }

I, E. Q. Drummond, clerk of the city of Huntington, do hereby certify that the foregoing to which this is attached is a full, true and perfect copy of the appeal bond of Hannah Schaefer, in the appeal of the said Hannah Schaefer from precept issued in favor of Draper & Werling, contractors for paving William street, which appeal bond is referred to on page "C" being the last page of the transcript of council proceedings in the matter of paving William street made by William Schwartz, city clerk on the 4th day of August, 1894, and the proceedings of the common council of the city of Huntington, Indiana, relating thereto as appears from the original on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said city of Huntington this 3rd day of May 1897.

E. Q. DRUMMOND, *City Clerk.*

Precept.

STATE OF INDIANA,
Huntington County, } *ss:*

The City of Huntington to John M. Hargrove, treasurer of said
69 city:

Whereas it appears by affidavit of Henry D. Draper and Julius H. Werling duly certified and filed with the clerk of said city, that an estimate for work done by said Henry D. Draper and Julius H. Werling under their certain contract with the said city, for the paving of William street with brick was on the 15th day of March, 1894, duly allowed and certified to them by the city clerk of said city by which said estimate it appears that the sum of $900.18 is due to said Draper and Werling from Hannah Schaefer who is a resident of said city, being the amount *of lots* assessed against lots 11, 13, 14, 15, 16 and 17 in Schaefer's addition owned by said Hannah Schaefer.

And whereas, it further appears by said affidavit that the work estimated has been done according to contract and that said estimate was duly made and that there now remains unpaid the sum of $900.18 so assessed as aforesaid and that the said sum is still due and unpaid.

Now therefore you are commanded to make the said sum of $900.18 by demanding payment thereof from said Hannah Schaefer and in default of payment thereof within twenty days after such demand, that you, within ten days after the expiration of twenty days lay this precept upon the premises hereinbefore described, and sell the same or a sufficient part thereof, to satisfy said assessment and the costs of this writ, make due return to the clerk of said city within three months next hereafter.

Witness my hand and corporate seal of said city of Huntington, this 17th day of May A. D. 1894.

Z. T. DUNGAN, *Mayor*.

WILLIAM SCHWARTZ, *City Clerk*.

Clerk's Certificate.

STATE OF INDIANA,
Huntington County, City of Huntington, } *ss:*

70 I, E. Q. Drummond, clerk of the city of Huntington, do hereby certify that the foregoing to which this is attached is a full, true and perfect copy of a precept issued on the 17th day of May, 1894, by Zach. T. Dungan, mayor and William Schwartz, city clerk, against Hannah Schaefer, and in favor of Henry D. Draper and Julius H. Werling as appears from the original on file in city treasurer's office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said city of Huntington this 3rd day of May, 1897.

E. Q. DRUMMOND,
Clerk City of Huntington.

OCTOBER —, 1897, — Day.

STATE OF INDIANA,
Huntington County. }

In the Huntington Circuit Court, September Term, 1897.

JULIUS WERLING ET AL.
v.
HANNAH SCHAEFER ET AL. }

Come the parties by their attorneys and the defendants demur to the plaintiffs' transcript in the words and figures following:

Demurrer of Defendant to Transcript.

STATE OF INDIANA, }
Huntington County. }

In the Huntington Circuit Court, September Term, 1897.

JULIUS WERLING ET AL. }
v. }
HANNAH SCHAEFER. }

71 The defendants demur to the plaintiffs' complaint — the transcript and for ground of demurrers says that the same does not state facts sufficient to constitute a cause of action.

SAYLER & SAYLER,
B. F. IBACH,
Att'ys for Def'ts.

Overruled; Exception.

And the court being duly advised in the premises overrules the said demurrer, to which the defendants except.

Rule to Answer Transcript.

And on motion the defendants are ruled to answer said transcript. And the defendants file their motion to dismiss amended transcript to wit:

Motion to Dismiss Amended Transcript.

STATE OF INDIANA, }
Huntington County. }

In the Huntington Circuit Court, April Term, 1898.

JULIUS WERLING ET AL. }
v. }
HANNAH SCHAEFER. }

Comes now Hannah Schaefer and moves the court to dismiss the amended complaint filed this 14th day of June, 1898, in said cause for the following reasons:

1st. That said amended complaint or transcript shown on its face that it is not an amendment to the proceedings below before the council of the city of Huntington, but that it discloses action taken before the council by the council of the city of Huntington subsequent to the filing of said transcript and is an attempt to enlarge the plaintiffs' remedy in said cause.

2nd. That said amended transcript is an attempt to consolidate six different causes of action in one and does not give to Hannah Schaefer the right to plead to each separate cause of action as therein disclosed.

SAYLER & SAYLER,
Att'ys for Def't.

72 *Motion to Dismiss Overruled*—60 *Days Given for Bill of Exceptions.*

And the court being advised in the premises overrules said motion to which the defendants except and sixty (60) days are given to file bill of exceptions.

THURSDAY, *June* 14, 1898—58th Day.

JULIUS WERLING ET AL.
v. } No. 5616.
HANNAH SCHAEFER ET AL.

Come the parties by their attorneys and defendants file their motion to separate and number causes of action, to wit:

STATE OF INDIANA,
Huntington County.

In the Huntington Circuit Court, April Term, 1898.

JULIUS WERLING ET AL.
v.
HANNAH SCHAEFER ET AL.

Motion to Separate Causes of Action.

The defendant Hannah Schaefer, shows to the court that the transcript in the above-entitled cause shows that there are six causes of action so combined in said transcript that the defendant is unable to plead to the same.

Wherefore, the defendant, Hannah Schaefer, moves the court to require the plaintiff to separate his causes of action so that the defendant may be enabled to plead to each cause of action separately.

SAYLER & SAYLER,
Att'ys for Defendant.

SATURDAY, *June* 16, 1898—60th Day.

STATE OF INDIANA,
Huntington County.

In the Huntington Circuit Court, April Term, 1898

73 JULIUS WERLING ET AL.
v. } 5616.
HANNAH SCHAEFER.

Come the parties by the attorneys, and the defendant Hannah Schaefer now files her bill of exceptions No. 1 in said cause as follows, to wit:

Bill of Exceptions.

STATE OF INDIANA,
Huntington County.

In the Huntington Circuit Court, April Term, 1898.

JULIUS WERLING ET AL.
v.
HANNAH SCHAEFER ET AL.

Bill of exceptions.

Be it remembered that on the 14th day of June, 1898, it being the 56th judicial day of the April term, 1898, of said court the following pleas and proceedings were had in said cause before the Hon. Jabez T. Cox, judge *pro tem.* of said court. The said cause having been assigned to Hon. Jabez T. Cox, judge, for trial.

The said Hannah Schaefer by *their* attorneys Sayler & Sayler moved the court to dismiss the amended complaint in said action, which motion was as follows:

STATE OF INDIANA,
Huntington County.

In the Huntington Circuit Court, April Term, 1898.

74 *Motion to Dismiss the Complaint.*

JULIUS WERLING ET AL.
v.
HANNAH SCHAEFER.

Comes now Hannah Schaefer and moves the court to dismiss the amended complaint filed this 14th day of June, 1898, in said cause for the following reasons:

1st. That said amended complaint or transcript shows on its face that it is not an amendment to the proceedings below before the council of the city of Huntington but that it discloses action taken before the council by the council of the city of Huntington subsequent to the filing of said transcript and it is an attempt to enlarge the plaintiffs' remedy in said cause.

2nd. That said amended transcript is an attempt to consolidate six different causes of action in one and does not give to Hannah Schaefer the right to plead to each separate cause of action as therein disclosed.

SAYLER & SAYLER,
Attorneys for Def't.

This motion was submitted to the court and overruled, to which the defendant Hannah Schaefer, at the time excepted and defendant now tenders this bill of exceptions and prays that the same be signed, sealed and made a part of the record which is done this 16th day of June, 1898.

J. T. COX,
Pro Tem. Judge of Huntington Circuit Court.

75 And afterwards, to wit: at a regular term of the circuit court of Huntington county in the State of Indiana, begun and held at the court-house in the city of Huntington, in said county and State, on Monday, the 11th day of April, 1898, and at the time fixed by law for the holding of a term of said court, before Hon. Jabez T. Cox, judge of the 51st judicial circuit of Indiana, and special judge of the Huntington circuit court of Huntington county, in the State of Indiana, the following proceedings were had in the above-entitled cause as the same appears on record on the order books of said court, on the dates respectively indicated, to wit:

TUESDAY, *June* 14, 1898—56th Day.

JULIUS WERLING ET AL.
v.
HANNAH SCHAEFER ET AL. } No. 5616.

Come the parties by their attorneys and the plaintiffs file their amended transcript to wit:

Supplemental Amended Transcript.

Supplemental transcript of the proceedings of the common council of *of* the city of Huntington, Ind., relating to the improvement of William street, in said city, by paving with brick.

76 *Supplemental Transcript of the Proceedings of the Common Council of the City of Huntington, Indiana, Relating to the Improvement of William Street, in said City, by Paving the same with Brick.*

Chamber of the common council of the city of Huntington, Indiana.

TUESDAY, *March* 22, 1898, at 7.30 o'clock p. m.

The common council met in regular session.

Present: His honor, Mayor S. C. Cast in the chair, and the following councilmen:

Dimond, Gibson, Mader, Speaker, Weber, Right—6.

Absent: None—0.

Affidavit for precept, Draper & Werling *vs.* Hannah Schaefer, owner of lot No. 14, Schaefer's addition, account of William Street improvement, was read as follows:

STATE OF INDIANA,
Huntington County, } *ss:*

Before me, S. T. Cast, mayor of the city of Huntington, personally appeared Henry Draper & Julius Werling and being duly sworn on oath says that heretofore, to wit, on the 15th day of March A. D. 1894, an estimate was duly allowed and certified to them by Henry H. Wagoner, city civil engineer of said city for work done by them under a certain contract with said city for paving William street in said city with brick, that — said estimate it appears that the sum of one hundred and forty-nine dollars and no cents is assessed against lot No. fourteen (14) in Schafer's addition to the city of Huntington, Huntington county, Indiana, owned by Hannah Schaefer, who is a resident of said city, of which sum no dollars and no cents *has* been paid, and there now remains due and unpaid, the sum of one hundred and forty-nine dollars and no cents. That the work estimated has been done according to contract and that the said estimate has been duly made in accordance with an order from the common council of the city of Huntington.

77 JULIUS WERLING.
HENRY DRAPER.

Sworn and subscribed to before me, this 22nd day of March, A. D. 1898.

[SEAL.] S. T. CAST, *Mayor.*

"*Resolution.*"

Whereas, Draper & Werling have filed affidavit showing that there is still due upon lot No. (14) of Schaefer's addition of the city of Huntington, Indiana, — in the name of Hannah Schaefer for work performed in the improvement of William street upon which said lot abuts according to a resolution of this council adopted the 23rd day of August, 1893, and the contract of the said Draper & Werling with the city for the improvement of said street; therefore,

Be it resolved, by the common council of the city of Huntington, Indiana, two-thirds of all the members thereof concurring, That a precept be issued upon said affidavit for the collection of said amounts now so due.

Respectfully submitted,

J. SPEAKER,
Councilman from 1st Ward.

Dimond moved the adoption of the resolution.
Voting in the affirmatice were:
Dimond, Gibson, Mader, Speaker, Weber, Wright—6.
Voting for the negative, none—0.
So the resolution was adopted.

Affidavit for precept, Draper & Werling *vs.* Hannah Schaefer, owner of lot No. 16, Schaefer's addition, improvement of William street, was read as follows:

STATE OF INDIANA, *Huntington County,* } *ss:*

Before me S. T. Cast, mayor of the city of Huntington, personally appeared Henry Draper & Julius Werling and being
78 duly sworn upon *his* oath says that heretofore, to wit: on the

15th day of March, A. D. 1894, an estimate was duly allowed and certified to them by Henry H. Wagoner, city civil engineer of said city for work done by them under their certain contract with said city for paving William street in said city with brick. That by said estimate it appears that the sum of one hundred and forty-nine dollars and no cents is assessed against lot number sixteen in Schaefer's addition to the city of Huntington, Huntington county, Indiana, owned by Hannah Schaefer, who is a resident of said city of which sum no dollars and no cents *has* been paid, and there now remains due and unpaid the sum of one hundred and forty-nine dollars and no cents. That the work has been done according to contract, and that the said estimate has been duly made in accordance with an order from the common council of the city of Huntington.

JULIUS WERLING.
HENRY DRAPER.

Subscribed and sworn to before me this 22nd day of March, A. D. 1898.

[SEAL.] S. T. CAST, *Mayor.*

Resolution ordering that a precept be issued upon the foregoing affidavit, was then submitted as follows:

Resolution.

Whereas, Draper & Werling have filed an affidavit showing that there is still due upon lot No. sixteen (16) of Schaefer's addition to the city of Huntington, Indiana, — in the name of Hannah Schaefer, for work performed in the improvement of William street upon which said lot abuts, according to a resolution of this council adopted the 23rd day of August, 1893, and the contract of said Draper & Werling with the city for the improvement of said street: therefore,

79 Be it resolved, by the common council of the city of Huntington, Indiana, two-thirds of all the members thereof, concurring, That a precept be issued upon said affidavit for the collection of said amounts now so due.

Respectfully submitted, M. G. WRIGHT,
Councilman from 3rd Ward.

Gibson moved that the resolution be adopted.
Dimond, Gibson, Mader, Speaker, Weber, Wright—6.
Voting for the negative: None—0.
The resolution was therefore adopted.

Affidavit for precept of Draper & Werling *vs.* Hannah Schaefer owner of lot No. 17, Schaefer's addition, William Street improvement, was read in these words, to wit:

STATE OF INDIANA,
Huntington County, } *ss:*

Before me S. T. Cast, mayor of the city of Huntington, personally appeared Henry Draper & Julius Werling and being duly sworn upon *his* oath say*s* that heretofore, to wit: on the 15th day of March, A. D. 1894, an estimate was duly allowed and certified to them by Henry Wagoner, city civil engineer of said city for work done under their certain contract with said city for paving William street in said city with brick, that by said estimate *that* the sum of one hundred and forty-nine dollars and no cents is assessed against lot number seventeen (17) in Schaefer's addition to the city of Huntington, Huntington county, Indiana, owned by Hannah Schaefer who is a resident of said city, of which sum no dollars and cents *has* been paid, and there now remains due and unpaid, the sum of one hundred and sixty dollars and eighteen cents. That the work estimated has been done according to contract, and that the said estimate has been duly made in accordance with an order from the common council of the city of Huntington.

80 JULIUS WERLING,
HENRY DRAPER.

Subscribed and sworn to before me this 22nd day of March, A. D. 1898.

[SEAL.] S. T. CAST, *Mayor.*

Resolution ordering the issue of a precept upon the foregoing affidavit, was read, as follows:

Resolution.

Whereas, Draper & Werling have filed an affidavit showing that there is still due upon lot No. seventeen (17) of Schaefer's addition *of* the city of Huntington, Indiana, — in the name of Hannah Schaefer, for work performed in the improvement of William street upon which said lot abuts, according to a resolution of this council adopted the 23rd day of August, 1893, and the contract of said Draper & Werling with the city for the improvement of said street; therefore,

Be it resolved, by the common council of the city of Huntington, Indiana, two-thirds of all the members thereof concurring, that a precept be issued upon said affidavit for the collection of said amounts now so due.

Respectfully submitted,

WM. DIMOND,
Councilman 3rd Ward.

Dimond moved the adoption of the resolution.

Voting in the affirmative were:

Dimond, Gibson, Mader, Speaker, Weber, Wright—6.

Resolution ordering the issue of a precept upon the foregoing affidavit, was read, as follows:

Resolution.

Whereas, Draper & Werling have filed affidavit showing that there is still due on lot No. seventeen (17) of Schaefer's addition *of*

the city of Huntington, Indiana, — in the name of Hannah
81 Schaefer for work performed in the improvement of William
street, upon which — lot abuts, according to a resolution of this council adopted on the 23rd day of August, 1893, and the contract of said Draper & Werling with the city for the improvement of said street: therefore,

Be it resolved, by the common council of the city of Huntington, Indiana, two-thirds of all the members thereof concurring, that a precept be issued upon said affidavit for the collection of said amount now so due.

Respectfully submitted,

C. S. GIBSON,
Councilman from — Ward.

Weber moved that the resolution be adopted.

Voting in the affirmative were:

Dimond, Gibson, Mader, Speaker, Weber, Wright—6.

Voting for the negative, none—0.

Affidavit for precept, Draper & Werling *vs.* Hannah Schaefer, owner of lot No. 15, Schaefer's addition on William street, was read, as follows:

STATE OF INDIANA, }
Huntington County, } *ss:*

Before me, S. T. Cast, mayor of the city of Huntington, personally appeared Henry Draper & Julius Werling, and being duly sworn upon *his* oath says that heretofore, to wit: on the 15th day of March A. D. 1894, an estimate was duly allowed and certified to them by Henry Wagoner, city civil engineer of said city for work done by them under a certain contract with said city for paving William street in said city with brick, that by said estimate — appears that the sum of one hundred and forty-nine dollars and no cents is assessed against lot No. fifteen (15) in Schaefer's addition to the city of Huntington, Huntington county, Indiana, owned by Hannah Schaefer, who is a
resident of said city, of which sum no dollars and no cents
82 *has* been paid, and there now remains due and unpaid the
sum of one hundred and forty-nine dollars and no cents. That the work estimated has been done according to contract, and that the said estimate has been duly made in accordance with an order from the common council of the city of Huntington.

JULIUS WERLING.
HENRY DRAPER.

Sworn and subscribed to before me this 22nd day of March A. D. 1898.

[SEAL.] S. T. CAST, *Mayor.*

Resolution ordering that a precept be issued upon the foregoing affidavit, was read, as follows:—

Resolution.

Whereas, Draper & Werling have filed an affidavit showing that there is due upon lot No. fifteen (15) of Schaefer's addition *of* the city of Huntington, Indiana,—in the name of Hannah Schaefer for work performed in the improvement of William street, upon which said lot abuts, according to a resolution of this council adopted the 23rd day of August, 1893, and a contract of said Draper & Werling with the city for the improvement of said street; therefore,

Be it resolved, by the common council of the city of Huntington, Indiana, two-thirds of all the members thereof concurring, that a precept be issued upon said affidavit for the collection of said amounts now so due.

Respectfully submitted,

M. G. WRIGHT,
Councilman of Third Ward.

Gibson moved the adoption of the resolution.

Voting for the affirmative were:

Dimond, Gibson, Mader, Speaker, Weber, Wright—6.

Voting for the negative: None—0.

The resolution was therefore adopted.

83 Affidavit for precept of Draper & Werling *vs.* Hannah Schaefer, owner of lot No. 13, Schaefer's addition on William street, was read, as follows:

STATE OF INDIANA, } *ss:*
Huntington County, }

Before me, Simeon T. Cast, of the city of Huntington, personally appeared Henry Draper & Julius Werling and being sworn upon *his* oath say*s* that heretofore, to wit: on the 15th day of March A. D. 1894, an estimate was duly allowed and certified to them by Henry H. Wagoner, city civil engineer of said city, for work done by them under their contract with said city for paving William street with brick, that by said estimate it appears that the sum of one hundred and forty-nine dollars and no cents is assessed against lot No. thirteen (13) in Schaefer's addition to the city of Huntington, Indiana, owned by Hannah Schaefer, who is a resident of said city, of which sum no dollars and no cents *has* been paid, and there now remains due and unpaid the sum of one hundred and forty-nine dollars and no cents. That the work estimated has been *made* done *in accordance with*—according to contract and that the said estimate has been duly made in accordance with an order from the common council of the city of Huntington.

JULIUS WERLING.
HENRY DRAPER.

Sworn and subscribed to before me this 22nd day of March A. D. 1898.

[SEAL.] S. T. CAST, *Mayor.*

Resolution ordering that a precept be issued upon the foregoing affidavit, was then submitted in the following words, to wit:

Resolution.

Whereas, Draper & Werling have filed affidavit showing that there
is still due upon lot No. thirteen (13) of Schaefer's addition,
84 *of* the city of Huntington, Indiana, — in the name of Hannah
Schaefer, for work performed in the improvement of William
street upon which said lot abuts, according to a resolution of this
council adopted on the 23rd day of August, 1893, and the contract
of said Draper & Werling with the city for the improvement of said
street, therefore.

Be it resolved, by the common council of the city of Huntington, Indiana, two-thirds of all the members thereof concurring, that a precept be issued upon said affidavit for the collection of said amounts now so due.

Respectfully submitted,

A. A. WEBER,
Councilman from 3rd Ward.

Speaker moved the adoption of the resolution.
Voting in the affirmative were:
Dimond, Gibson, Mader, Speaker, Weber, Wright—6
Voting in the negative: None—0
So the resolution was adopted.

S. T. CAST, *Mayor.*

Attest: E. Q. DRUMMOND, *City Clerk.*

85 STATE OF INDIANA, }
Huntington County, } *ss:*

The City of Huntington to Olin S. Bay, treasurer of said city:

Whereas, it appears by the affidavit of Henry Draper & Julius Werling duly certified and filed with the clerk of said city, that an estimate for work done by said Draper & Werling under their certain contract with the said city, for the improvement of William street within said city, by paving with brick was, on the 15th day of March, 1894, duly allowed and certified to — by the city civil engineer of said city, by which said estimate it appears that the sum of one hundred forty-nine dollars and no cents is due to the said Draper & Werling from Hannah Schaefer who is a resident of said city, being the amount assessed against lot number eleven (11) in Schaefer's addition to the city of Huntington, Indiana, owned by said Hannah Schaefer.

And whereas, it further appears by the said affidavit that the work estimated has been done according to contract, and that said estimate was duly made; that there *has* been no dollars and no cents paid thereon, and that there now remains unpaid the sum of one hundred forty nine dollars and no cents, so assessed as aforesaid, and that the said sum is still due and unpaid.

Now, therefore, you are hereby commanded to make said sum of one hundred forty-nine dollars and no cents, by demanding payment thereof from the said Hannah Schaefer and in default of payment thereof within twenty days after such demand, that you, within ten days after the expiration of twenty days, lay this precept upon the premises hereinbefore described, and sell the same, or a sufficient part thereof, to satisfy said assessment and costs of this writ; and of your proceedings herein, and of this writ, make due return to the clerk of said city, within three months next hereafter.

Witness my hand and the corporate seal of the city of Huntington, this 23d day of March, A. D. 1898.

S. T. CAST, *Mayor.*

E. Q. DRUMMOND, *City Clerk.*

[Endorsed.]

Precept.

DRAPER & WERLING }
vs.
HANNAH SCHAEFER. }

Rec. of col. Mar. 23, 1898.
Demand " 23, 1898.
In person.

O. S. BAY,
City Treas'r.

Publication	
Demand	25
Levy	
Certificate	
Return	
Advertisement	
Per cent. for collecting	7 45
Claim	149 00
Interest on claim	35 96
Issue fee	1 00
	$

86 STATE OF INDIANA, }
Huntington County, } *ss:*

The City of Huntington to Olin S. Bay, treasurer of said city:

Whereas, it appears by the affidavit of Henry Draper & Julius Werling duly certified and filed with the clerk of said city, that an estimate for work done by said Draper & Werling under their certain contract with the said city, for the improvement of William street, within said city by paving with brick was, on the 15th day of March, 1894, duly allowed and certified to them by the city clerk of said city, by which said estimate it appears that the sum of one hundred forty-nine dollars and no cents is due to the said Draper &

Werling from Hannah Schaefer who is a resident of said city, being the amount assessed against lot number thirteen (13) in Schaefer's addition to the city of Huntington Indiana owned by said Hannah Schaefer.

And whereas, it further appears by the said affidavit that the work estimated has been done according to contract, and that said estimate was duly made; that there *has* been no dollars and no cents paid thereon, and that there now remains unpaid the sum of one hundred forty-nine dollars and no cents, so assessed as aforesaid, and that the said sum is still due and unpaid.

Now, therefore, you are hereby commanded to make said sum of one hundred forty-nine dollars and no cents, by demanding payment thereof from the said Hannah Schaefer and in default of payment thereof within twenty days after such demand, that you, within ten days after the expiration of twenty days, lay this precept upon the premises hereinbefore described, and sell the same, or a sufficient part thereof, to satisfy said assessment and costs of this writ; and of your proceedings herein, and of this writ, make due return to the clerk of said city, within three months next hereafter.

Witness my hand and the corporate seal of the city of Huntington, this 23d day of March A. D. 1898.

S. T. CAST, *Mayor.*

E. Q. DRUMMOND, *City Clerk.*

[Endorsed.]

Precept.

DRAPER & WERLING
vs.
HANNAH SCHAEFER.

Rec. of col. Mar. 23, 1898.
Demand " 23, 1898.
In person.

O. S. BAY,
City Treas'r.

Publication	
Demand	25
Levy	
Certificate	
Return	
Advertisement	
Per cent. for collecting	7 45
Claim	149 00
Interest on claim	35 96
Issue fee	1 00
	$

87 STATE OF INDIANA, *Huntington County*, } *ss:*

The City of Huntington to Olin S. Bay, treasurer of said city:

Whereas, it appears by the affidavit of Henry Draper & Julius Werling duly certified and filed with the clerk of said city, that an estimate for work done by said Draper & Werling under their certain contract with the said city, for the improvement of William street, in said city, by paving the same with brick was, on the 15th day of March, 1894, duly allowed and certified to by the city civil engineer of said city, by which said estimate is appears that the sum of one hundred forty-nine dollars and no cents is due to the said Draper & Werling from Hannah Schaefer who is a resident of said city, being the amount assessed against lot number fourteen (14) in Schaefer's addition to the city of Huntington, Ind., owned by said Hannah Schaefer.

And whereas, it further appears by the said affidavit that the work estimated has been done according to contract, and that said estimate was duly made; that there *has* been no dollars and no cents paid thereon, and that there now remains unpaid the sum of one hundred forty-nine dollars and no cents, so assessed as aforesaid, and that the said sum is still due and unpaid.

Now, therefore, you are hereby commanded to make said sum of one hundred forty-nine dollars and no cents, by demanding payment thereof from the said Hannah Schaefer and in default of payment thereof within twenty days after such demand, that you, within ten days after the expiration of twenty days, lay this precept upon the premises hereinbefore described, and sell the same, or a sufficient part thereof, to satisfy said assessment and costs of this writ; and of your proceedings herein, and of this writ, make due return to the clerk of said city, within three months next hereafter.

Witness my hand and the corporate seal of the city of Huntington this 23d day of March A. D. 1898.

S. T. CAST, *Mayor.*

E. Q. DRUMMOND, *City Clerk.*

[Endorsed.]

Precept.

DRAPER & WERLING
vs.
HANNAH SCHAEFER.

Rec. of col. Mar. 23, 1898.
Demand Mar. 23, 1898.
In person.

O. S. BAY, *City Treas.*

Publication	
Demand	25
Levy	
Certificate	
Return	
Advertisement	
Per cent. for collecting	7 45
Claim	149 00
Interest on claim	35 96
Issue fee	1 00
	$

88 STATE OF INDIANA,
Huntington County, } *ss:*

The City of Huntington to Olin S. Bay, treasurer of said city:

Whereas, it appears by the affidavit of Henry Draper and Julius Werling duly certified and filed with the clerk of said city that an estimate for work done by said Draper & Werling under certain contract with the said city, for the improvement of William street, within said city, by paving the same with brick was, on the 15th day of March, 1894, duly allowed and certified to them by the city civil engineer of said city, by which said estimate it appears that the sum of one hundred forty-nine dollars and no cents is due to the said Draper & Werling from Hannah Schaefer who is a resident of said city, being the amount assessed against lot number fifteen (15) in Shaefer's addition to the city of Huntington, Ind. owned by said Hannah Schaefer.

And whereas, it further appears by the said affidavit that the work estimated has been done according to contract, and that said estimate was duly made; that there *has* been no dollars and no cents paid thereon, and that there now remains unpaid the sum of one hundred forty-nine dollars and no cents, so assessed as aforesaid, and that the said sum is still due and unpaid.

Now, therefore, you are hereby commanded to make said sum of one hundred forty-nine dollars and no cents, by demanding payment thereof from the said Hannah Schaefer and in default of payment thereof within twenty days after such demand, that you, within ten days after the expiration of twenty days, lay this precept upon the premises hereinbefore described, and sell the same, or a sufficient part thereof, to satisfy said assessment and costs of this writ; and of your proceedings herein, and of this writ, make due return to the clerk of said city, within three months next hereafter.

Witness my hand and the corporate seal of the city of Huntington, this 23d day of March, A. D. 1899.

S. T. CAST, *Mayor.*

E. Q. DRUMMOND, *City Clerk.*

[Endorsed.]

Precept.

DRAPER & WERLING }
vs.
HANNAH SCHAEFER. }

Rec. of col. Mar. 23, 1898.
Demand Mar. 23, 1898.
In person.

O. S. BAY,
City Treas'r.

Publication	
Demand	25
Levy	
Certificate	
Return	
Advertisement	
Per cent. for collecting	7 45
Claim	149 00
Interest on claim	35 96
Issue fee	1 00
	$

89 STATE OF INDIANA, } *Huntington County,* } *ss:*

The City of Huntington to Olin S. Bay, treasurer of said city:

Whereas it appears by the affidavit of Henry Draper & Julius Werling duly certified and filed with the clerk of said city, that an estimate for work done by said Draper & Werling under certain contract with the said city, for the improvement of William street, within said city, by paving the same with brick was, on the 15th day of March, 1894, duly allowed and certified to them by the city civil engineer of said city, by which said estimate it appears that the sum of one hundred forty-nine dollars and no cents is due to the said Draper & Werling from Hannah Schaefer who is a resident of said city, being the amount assessed against lot number sixteen (16) in Schaefer's addition to the city of Huntington, Indiana, owned by said Hannah Schaefer.

And whereas, it further appears by the said affidavit that the work estimated has been done according to contract, and that said estimate was duly made; that there *has* been no dollars and no cents paid thereon, and that there now remains unpaid the sum of one hundred forty-nine dollars and no cents, so assessed as aforesaid, and that the said sum is still due and unpaid.

Now, therefore, you are hereby commanded to make said sum of one hundred forty-nine dollars and no cents, by demanding payment thereof from the said Hannah Schaefer and in default of payment thereof within twenty days after such demand, that you, within ten days after the expiration of twenty days, lay this precept upon the premises hereinbefore described, and sell the same, or a sufficient part thereof, to satisfy said assessment and costs of this writ; and of your proceedings herein, and of this writ, make due return to the clerk of said city, within three months next hereafter.

Witness my hand and the corporate seal of the city of Huntington, this 23d day of March, A. D. 1898.

S. T. CAST, *Mayor.*

E. Q. DRUMMOND, *City Clerk.*

[Endorsed.]

Precept.

DRAPER & WERLING }
vs.
HANNAH SCHAEFER. }

Rec. of col. Mar. 23, 1898.
Demand Mar. 23, 1898.
In person.

O. S. BAY,
City Treas'r.

Publication		
Demand		25
Levy		
Certificate		
Return		
Advertisement		
Per cent. for collecting	7	45
Claim	149	00
Interest on claim	35	96
Issue fee	1	00
	$	

90 STATE OF INDIANA, }
Huntington County, } *ss:*

The City of Huntington to Olin S. Bay, treasurer of said city:

Whereas, it appears by the affidavit of Henry Draper & Julius Werling duly certified and filed with the clerk of said city, that an estimate for work done by said Draper & Werling under their certain contract with the said city, for the improvement of William street (within said city) by paving the same with brick was, on the 15th day of March, 1894, duly allowed and certified to — by the city civil engineer of said city, by which said estimate it appears that the sum of one hundred forty-nine dollars and no cents is due to the said Draper & Werling from Hannah Schaefer who is a resident of said city, being the amount assessed against lot number seventeen (17) in Schaefer's addition to the city of Huntington, Indiana, owned by said Hannah Schaefer

And whereas, it further appears by the said affidavit that the work estimated has been done according to contract, and that said estimate was duly made; that there *has* been no dollars and no cents paid thereon, and that there now remains unpaid the sum of one hundred forty-nine dollars and no cents, so assessed as aforesaid, and that the said sum is still due and unpaid.

Now, therefore, you are hereby commanded to make said sum of one hundred, forty-nine dollars and no cents, by demanding payment thereof from the said Hannah Schaefer and in default of payment thereof within twenty days after such demand, that you, within ten days after the expiration of twenty days, lay this precept upon the premises hereinbefore described, and sell the same, or a sufficient part thereof, to satisfy said assessment and costs of this writ; and of your proceedings herein, and of this writ, make due return to the clerk of said city, within three months next hereafter.

Witness my hand and the corporate seal of the city of Huntington, this 23d day of March A. D. 1898.

S. T. CAST, *Mayor.*

E. Q. DRUMMOND, *City Clerk.*

[Endorsed.]

Precept.

WERLING & DRAPER
vs.
HANNAH SCHAEFER.

Rec. of col. Mar. 23, 1898.
Demand Mar. 23, 1898.
In person.

O. S. BAY,
City Treas'r.

Publication	
Demand	25
Levy	
Certificate	
Return	
Advertisement	
Per cent. for collecting	7 45
Claim	149 00
Interest on claim	25 96
Issue fee	1 00
	$

91 Chamber of the common council of the city of Huntington, Indiana.

TUESDAY, *May* 17, 1898—eight (8.00) o'clock p. m.

The common council met pursuant to adjournment.

Present: His honor, Mayor St. Cast in the chair and the following councilmen:

Dickinson, Foster, Heaston, Mader, Speaker, Weber—6.

Absent: None—0.

Appeal bonds of Hannah Schaefer in the matter of appeals from assessments against lots No. 11, 13, 14, 15, 16 and 17 in Schaefer's addition, for the improvement of William street, within said city, were read as follows:

STATE OF INDIANA,
Huntington County, } *ss:*

We, Hannah Schaefer, Martin B. Schaefer and William H. Drover are bound unto Henry Draper and Julius Werling in the sum of $500.00 to the payment of which we severally bind ourselves, our heirs, executors and administrators.

The condition of the above obligation is that Hannah Schaefer is the owner of lot No. 11 in Schaefer's addition to the city of Huntington, Huntington county, State of Indiana, and is aggrieved by a certain precept issued by Olin S. Bay, treasurer of the city of Huntington, Indiana, for the collection of a certain assessment on said lot No. 11 for the improvement of William str*aa*t in said city and demand for the payment thereof was made of Hannah Schaefer by Olin S. Bay, treasurer of the city of Huntington, Indiana, the 23rd day of March, 1898; now therefore, if the above-bound Hannah Schaefer shall pay whatever judgment may be rendered against her in the Huntington circuit court in favor of said Henry Draper and Julius Werling on such precept then this obligation shall be void, otherwise to remain in full force.

Sealed and dated this 9th day of April, 1898.

92 HANNAH D. SCHAEFER.
M. B. SCHAEFER.
WM. H. DROVER.

STATE OF INDIANA,
Huntington C-unty, } *ss:*

We, Hannah Schaefer, Martin B. Schaefer and William H. Drover are bound unto Henry Draper and Julius Werling in the sum of $500.00 to the payment of which we severally bind ourselves, our heirs, executors and administrators. The condition of the above obligation is that Hannah Schaefer is the owner of lot No. 13 in Schaefer's addition to the city of Huntington, in the county of Huntington, in the State of Indiana, and is aggrieved by a certain precept issued to Olin S. Bay for the collection of a certain assessment on said lot No. 13 for the improvement of William street in said city and demand for the payment was made of Hannah

Schaefer by Olin S. Bay, treasurer of the city of Huntington, Indiana, the 23rd day of March, 1898; now therefore if the above-bound Hannah Schaefer shall pay whatever judgment may be rendered against her in the Huntington circuit court in favor of Henry Draper and Julius Werling in such precept, then this obligation shall be void, otherwise to remain in full force.

Sealed and dated this 9th day of April, 1898.

HANNAH SCHAEFER.
M. B. SCHAEFER.
WM. H. DROVER.

93 STATE OF INDIANA,
Huntington County, } *ss:*

We, Hannah Schaefer, Martin B. Schaefer, and William H. Drover, are bound unto Henry Draper and Julius Werling in the sum of $500.00, to the payment of which we severally bind ourselves, our heirs, executors and adminiatrators. The condition of the above obligation is that Hannah Schaefer is the owner of lot No. 14 in Schaefer's addition to the city of Huntington, in Huntington county, State of Indiana, and is aggrieved by a certain precept issued to Olin S. Bay, treasurer of the city of Huntington, Indiana, for the collection of a certain assessment on said lot No. 14 for the improvement of William street in said city and demand for the payment thereof was made of Hannah Schaefer by said Olin S. Bay, treasurer of the city of Huntington, Indiana, the 23rd day of March, 1898; now therefore, if the above-bound Hannah Schaefer shall pay whatever judgment may be rendered against her in the Huntington circuit court in favor of Henry Draper and Julius Werling on such precept, then this obligation shall be void, otherwise to remain in full force.

Sealed and dated this 9th day of April, 1898.

HANNAH D. SCHAEFER.
M. B. SCHAEFER.
WM. B. DROVER.

94 STATE OF INDIANA,
Huntington County, } *ss:*

We, Hannah Schaefer, Martin B. Schaefer, and William H. Drover, are bound unto Henry Draper and Julius Werling in the sum of $500.00, to the payment of which we severally bind ourselves, our heirs, executors and administrators. The condition of the above obligation is that Hannah Schaefer is the owner of lot No. 15 in Schaefer's addition to the city of Huntington, in Huntington county, State of Indiana, and is aggrieved by a certain precept issued to Olin S. Bay, treasurer of the city of Huntington, Indiana, for the collection of a certain assessment on said lot No. 15 for the improvement of William street in said city and demand for the payment thereof was made of Hannah Schaefer by said Olin S. Bay, treasurer of the city of Huntington, Indiana, the 23rd day of March 1898; now therefore if the above-bound Hannah Schaefer shall pay whatever judgment may be rendered against her in the Huntington circuit court in favor of Henry Draper and Julius Werling on such precept, then this obligation shall be void, otherwise to remain in full force.

Sealed and dated this 9th day of April, 1898.

HANNAH D. SCHAEFER.
M. B. SCHAEFER.
WM. H. DROVER.

95 STATE OF INDIANA,
Huntington County, } *ss:*

We, Hannah Schaefer, Martin B. Schaefer and William H. Drover, are bound unto Henry Draper and Julius Werling in the sum of $500.00, to the payment of which we severally bind ourselves, our heirs, executors and administrators. The condition of the above obligation is that Hannah Schaefer is the owner of lot No. 16 in Schaefer's addition to the city of Huntington, in Huntington county, State of Indiana, and is aggrieved by a certain precept issued to Olin S. Bay, treasurer of the city of Huntington, Indiana, for the collection of a certain assessment on said lot No. 16 for the improvement of William street in said city and demand for the payment thereof was made of Hannah Schaefer by said Olin S. Bay, treasurer of the city of Huntington, Indiana, on the 23rd day of March, 1898; now therefore if the above-bound Hannah Schaefer shall pay whatever judgment may be rendered against her in the Huntington circuit court in favor of Henry Draper and Julius Werling on such precept, then this obligation shall be void, otherwise to remain in full force.

Sealed and dated this 9th day of April, 1898.

HANNAH D. SCHAEFER.
M. B. SCHAEFER.
WM. H. DROVER.

96 STATE OF INDIANA,
Huntington County, } *ss:*

We, Hannah Schaefer, Martin B. Schaefer, and William H. Drover, are bound unto Henry Draper and Julius Werling in the sum of $500.00, to the payment of which we severally bind ourselves, our heirs, executors, and administrators. The condition of the above obligation is that Hannah Schaefer is the owner of lot No. 17 in Schaefer's addition to the city of Huntington, in Huntington county, State of Indiana, and is aggrieved by a certain precept issued to Olin S. Bay, treasurer of the city of Huntington, Indiana, for the collection of a certain assessment on said lot No. 17 for the improvement of William street in said city and demand for the payment thereof was made of Hannah Schaefer by said Olin S. Bay, treasurer of the city of Huntington, Indiana, the 23rd day of March, 1898; now therefore if the above-bound Hannah Schaefer shall pay whatever judgment may be rendered against her in the Huntington circuit court in favor of Henry Draper and Julius Werling on such precept, then this obligation shall be void, otherwise to remain in full force.

Sealed and dated this 9th day of April, 1898.

HANNAH D. SCHAEFER.
M. B. SCHAEFER.
WM. H. DROVER.

Weber moved that the foregoing bonds be received and placed on file.

Which motion was concurred in.

S. T. CAST, *Mayor.*

Attest: E. Q. DRUMMOND, *City Clerk.*

97 *Clerk's Certificate.*

STATE OF INDIANA,
Huntington County, City of Huntington, } *ss:*

I, E. Q. Drummond, clerk of the city of Huntington, do hereby certify that the foregoing to which this is attached is a full, true, perfect and complete copy of the proceedings of the common council of the city of Huntington, Indiana, had, and transacted on the 22nd day of March, 1898, and the 17th day of May, 1898, in relation to affidavits for precepts by Draper and Werling *vs.* Hannah Schaefer, and bonds in appeals therefrom as appears from the originals on file and of record in my office.

In testimony whereof, I have hereunto set my hand and seal of the said city of Huntington, Indiana, this 20th day of May, A. D. 1898.

[SEAL.]

E. Q. DRUMMOND,
Clerk of the City of Huntington.

98 And afterwards, to wit, at a regular term of the circuit court of Huntington county in the State of Indiana, begun and held at the court-house in the city of Huntington, Indiana, on the 5th day of September, 1898, the same being the time fixed by law for holding a term of said court and before Hon. Jabez T. Cox, judge of the 51st judicial circuit of Indiana and special judge of the circuit court of Huntington county in the State of Indiana, the following proceedings were had in the above-entitled cause, as the same appears of record in the order books of said court on the dates respectively indicated, to wit:

Motion to Separate & Number Causes Overruled.

WEDNESDAY, *October* 5, 1898—27th Day.

JULIUS WERLING ET AL.
vs.
HANNAH SCHAEFER ET AL. } No. 5616.

Come the parties by their attorneys and the court being advised in the premises, overrules the motion to separate and number causes of action to which the defendants except and ninety (90) days are given to file bill of exceptions.

And on motion the defendants are ruled to answer.

FRIDAY, *November* 11, 1898—59th Day.

JULIUS WERLING ET AL.
vs.
HANNAH SCHAEFER ET AL. } No. 5616.

Come the parties by their attorneys and the defendants file their demurrer to the transcript, to wit:

STATE OF INDIANA,
Huntington County.

In the Huntington Circuit Court, September Term, 1898.

HENRY DRAPER, JULIUS WERLING
vs.
HANNAH SCHAEFER ET AL.

99 *Demurrer of Def't to Amended Transcript.*

The defendants demur to the amended transcript in said cause — *of* demurr- says that the same does not state facts sufficient to constitute a cause of action.

SAYLER & SAYLER,
Att'ys for Def't.

Overrules Exception.

And the court being advised in the premises, overrules said demurrer, to which the defendants except.

And the defendants now file their answer in eight (8) paragraphs, to wit: (Should be seven paragraphs).

EXHIBIT "A" OF ANSWER.

Mr. H. B. Sayler and S. M. Sayler, being present, appeared for Mrs. Hannah Schaefer and offered the following written objections to the paving of William street with brick:

In the matter of the improvement of William street in the city of Huntington, Indiana, Hannah Schaefer owner of lots Nos. 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17, in Schaefer's addition to the city of Huntington, Indiana, and a tract fronting on William street in said city 252 feet wide extending east from said addition, object to the proposed improvement of said William street because the cost of said improvement will greatly exceed the benefit of said improvement.

2nd. Said proposed improvement is not necessary to said real estate and is not of public utility to said real estate.

SAYLER & SAYLER,
Att'ys for Hannah Schaefer.

Dated September 25th, 1893.

100 EXHIBIT "B" OF ANSWER.

To the honorable mayor and common council of the city of Huntington, Indiana:

Hannah Schaefer, the undersigned owner of lots Nos. 5, 6, 8, 9, 10, 11, 12, 13. 14, 15, 16 and 17, in Schaefer's addition to the city of Huntington, in Huntington county, in the State of Indiana, and an unplatted tract 252 feet wide fronting on William street in said city and the southwest corner thereof being the southeast corner of Lucien street, hereby protests to the receiving bids for and the letting of contracts for the proposed improvement of said William street by paving said street with brick, for the following reasons:

1st. That said improvement as contemplated, and for which bids for the improvement of William street by paving it with brick are to be received, is not of public utility.

2nd. That said improvement as proposed is not of necessity.

3rd. That the common council on the 25th day of September, 1893, the date set forth in the notice to the property-owners to make objections to the necessity of said proposed improvement refused to give to the undersigned a hearing on her objections which she filed by the hearing of testimony, opinions or statements in her behalf either under oath or otherwise by any person not the owner of real estate abutting on said William street or by any other person in her behalf.

4th. That the cost of said proposed improvement will be greatly in excess of the benefits to all of her said real estate or to any parcel of said real estate or to any number of parcels of said real estate.

All of which objections and grounds of protest and protest shall apply to each several tract of real estate herein set forth.

Witness my hand and seal this 26th day of September, 1893.

HANNAH SCHAEFER.

101 *Answer.*

STATE OF INDIANA, }
Huntington County. }

In the Huntington Circuit Court, September Term, 1898.

HENRY DRAPER }
vs.
HANNAH SCHAEFER. }

Answer — 1st paragraph.

Comes now Hannah Schaefer, the appellant in the above-entitled cause of action — for a first paragraph of answer to the complaint herein, says that she admits that she is the owner of lots, 11, 13, 14, 16 and 17 in Hannah Schaefer's addition to the city of Huntington. That William street in said city runs along the front line of said lots, that the common council of the city of Huntington, Indiana,

established a grade of said city, that on the 28th day of August, 1893, the said common council ordered *that* improvement of said street by paving with brick, that notice was ordered given to property-owners along said street, that a meeting of the common council of said city would be held on the 25th day of September, 1893, to hear objections of any property-owners along said street to the necessity for the construction of said improvement. She further avers that on the 25th day of September, 1893, having filed her objections to the necessity of said improvement she appeared before said common council of the city of Huntington, Indiana, and offered to present her objections to the necessity of said improvement, but that the said common council refused to hear her objections to the necessity of said improvement of said street with brick, treating said objections as a mere communication and ordering the same placed on file. A copy of said objections is filed herewith, made a part hereof and marked Exhibit "A." And she avers that she could and would have shown by witnesses that said improvement was not necessary. And the appellant avers that by reason of the refusal
102 of the said common council to hear said objections or to take
any action thereon, the said city of Huntington, Indiana, is estopped from proceeding to collect any benefits assessed on the lots herein described. Wherefore she asks judgment for her costs herein.

2nd par. of answer.

2. And for a second paragraph of answer she says that she admits she is the owner of lots Nos. 11, 13, 14, 15, 16 and 17 in Hannah Schaefer's addition to the city of Huntington, Indiana. That William street runs along the front line of said lots; that the common council of the city of Huntington, Indiana, established a grade of said street; that on the 28th day of August, 1893, the said common council ordered the improvement of said street by paving with brick; that notice was ordered given to the property-owners along said street; that a meeting of the common council of said city would be held on the 25th day of September, 1893, to hear the objections of any property-owners along said street to the necessity for the construction of said improvement. She further avers that on the 25th day of September, 1893, having filed her objections to the necessity of said improvement, she appeared before said common council of the city of Huntington, Indiana, and offered to present her objections to the necessity of said improvement, but that the said common council refused to hear her objections to the necessity of the improvement of said street with brick, treating her said objections as a mere communication and ordering the same placed on file. A copy of said objections is filed herewith, made a part hereof and marked Exhibit "A." And she avers that she could and would have shown by witnesses that said improvement was not necessary. And the appellant -vers that by reason of the refusal of the said action thereon, the said city of Huntington, Indiana, is estopped
from proceeding to collect any benefits assessed on the lots
103 herein described. And she further avers that the common
council of the city of Huntington has never heard the said objec-

tions and she asks the court that they may be heard now, and for all other proper relief.

3rd par. of answer.

3rd. For a third paragraph of answer she says that she admits that she is the owner of lots 11, 13, 14, 15, 16 and 17 in Hannah Schaefer's addition to the city of Huntington, Indiana; that William street in said city runs along the front line of said lots; that the common council of the city of Huntington, Indiana, established a grade of said street and on the 28th day of August, 1893, ordered the improvement of said street by paving with brick; that notice was ordered given to the property-owners along said street that a meeting of said common council of said city would be on the 25th day of September, 1893, to hear objections of any property-owner along said street to the necessity of the construction of said improvement. She further avers that the said common council of said city ordered a notice to contractors that bids for the construction of said improvement by paving the same with brick according to plans and specifications in the office of the city civil engineer of said city, which plans and specifications are set out at length on pages of the complaint herein, would be received until 7 p. m. on the 26th day of September, 1893; that on the 28th day of August, 1893, the said common council determined not to hear any objections to the necessity of said improvement, but ordered said notice to property-owners to file objections to the necessity for said improvement only to comply with the letter of the law; that on the 26th day of September, 1893, at 2.50 p. m. the appellant filed in the office of the city clerk of said city a protest against the letting of the contract for said improvement, a copy of which protest is filed here-
104 with, made a part hereof and marked Exhibit "B." And that after the letting of said contract to the plaintiffs and before work began the defendant, by Martin B. Schaefer, her agent for that purpose, went to the plaintiffs and protested against said improvement and informed them that she would not pay for the same for the reason that it was illegal and void.

That said common council took no notice of said protest until the 9th day of October, 1893, when said common council treated said protest as a mere communication and ordered the same placed on file. She further avers that she filed in the office of the city clerk of said city, on the 25th day of September, 1893, her objections to the necessity for the construction of said improvement and appeared before the common council of said city and offered to present her objections to the necessity of said improvement, but that the said common council of said city refused to hear her objections and treated the same as a mere communication and ordered the same placed on file. She further avers that the said city of Huntington, Indiana, on the 9th day of October, 1893, entered into a contract with Werling and Draper, of the city of Huntington, Indiana, awarding them the construction of said improvement. She further avers that the said city of Huntington and said Werling and Draper had notice of protest of said appellant and of the failure to hear her objections to the necessity of said improvement, and she avers that by reason of the disregard of the city of said protest, said city is estopped from the proceeding to the collection of any benefits assessed on her said lots. Wherefore she asks judgment for the costs and for all other proper relief.

4th par. of ans.

4th. And for a fourth paragraph the appellant says that said William street was not constructed and improved according to the plans and specifications, in that the brick used were defective,
105 and the tar used for cementing said work not of the proper consistency; that the same froze before the cementing therefore; that the brick were laid on frozen material and where the street thawed and settled unevenly leaving holes and defective places in said street; that the gutters were made so uneven that the water stands in them at places at least two inches deep, all to the injury and damage of the appellant in the sum of $1000.00.

Wherefore she asks judgment for damages in the sum of $——

5th par. of ans.

5th. And for a fifth paragraph of answer, the appellant says that said William street was not constructed to the grade established by the common council of the city of Huntington, in its resolution established the grade of said street, the street as constructed being in some places too high and in other places too low.

6th par. of ans.

6th. And for a sixth paragraph of answer says that the several assessments of benefits on lots 11, 13, 14, 15, 16 and 17, to wit, are each severally exorbitant and are more than the assessed cash value of said several lots.

Wherefore she asks that said several assessments be severally modified so far as to be just and equitable.

7th par. of ans.

7th. And for seventh paragraph of answer, she says that several benefits to lots 11, 13, 14, 15, 16, and 17 are severally less than the cost of the improvements and that the values of said several lots are severally smaller than the cost of said improvement assessed against said lots and assessments of benefits to wit: would provided the same are not reduced and modified work a practical appropriation of said lots leaving nothing of value to the owner thereof.

Wherefore she asks that several assessments be severally modified so as to be just and reasonable.

106 *Demurrer to Each Paragraph of Answer.*

SATURDAY, *November 19th*, 1898—66th Day.

JULIUS WERLING ET AL.
vs.
HANNAH SCHAEFER ET AL. } No. 5616.

Come the parties by their attorneys and the plaintiffs file their separate and several demurrer to each paragraph of the answer, to wit:—

STATE OF INDIANA,
Huntington County, }

In the Huntington Circuit Court, September Term, 1898.

JULIUS WERLING ET AL.
vs.
HANNAH SCHAEFER ET AL. }

Comes now the plaintiffs and demur separately and severally to each and every paragraph of defendants' answer to the complaint, for the reason that neither paragraph of answer states facts sufficient to constitute a defense.

WM. H. HART,
JOHN Q. CLINE,
Att'ys for Pl'ff-.

And afterwards, to wit: at a regular term of the circuit court of Huntington county in the State of Indiana, begun and held at the court-house in the city of Huntington, in said county and State of Indiana, on Monday, the 9th day of January, 1899, the same being the time fixed by law for holding a term of said court, and before Hon. Jabez T. Cox, judge of the 51st judicial circuit of Indiana and special judge of the 56th judicial circuit of the Huntington circuit court of Indiana, the following proceedings were had in the above-entitled cause and entered of record on the order books of said court on the dates respectively indicated, to wit:

107 *Leave to File Add'l Paragraphs of Answer.*

TUESDAY, *February* 7, 1899—26th Day.

JULIUS WERLING ET AL.
vs.
HANNAH SCHAEFER ET AL. } No. 5616.

Comes the parties by their attorneys, and on oral motion the defendants are granted leave to withdraw the 4th paragraph of their answer and file six additional paragraphs of answer, which is now done, to wit:

8th par. of answer.

And for an eighth paragraph of answer the defendant, Hannah Schaefer, says that she is the owner of lot 11 in Schaefer's addition to the city of Huntington, Indiana; that the resolution of the common council of the city of Huntington for the improvement of William street along the front line of lot No. 11 of Schaefer's addition to the city of Huntington, Indiana, by paving the same with brick, set out in the plaintiff's transcript so far as the same affects said lot No. 11, and the assessments of benefits of said improvement of said William street to said lot No. 11 and the line therefore sought to be created and foreclosed as set out in the affidavit of the plaintiff for a precept as set out in plaintiff's transcript herein in the sum of $149.00, will work an appropriation of said real estate without any return therefor, a taking of the defendant's said real estate by law without just compensation, and will work an exaction, extortion, and confiscation of the defendant's real estate, in this, that said real estate was duly listed for taxation by the assessor of Huntington township, in Huntington county, Indiana, in the year 1891, and just prior to the making of said improvement, at the valuation of $280.00. That it was the duty of said assessor of Huntington township to list said real estate at its cash value. 108 That said sum of $280.00 was the cash value of said estate and the defendants avers that the said city of Huntington adopted said valuation and entered the same on the tax duplicate of the city of Huntington at $280.00 for said lot No. 11 in Schaefer's addition to the city of Huntington, Indiana. And the defendant further avers that the said improvement of William street in the city of Huntington, was fully completed in the year 1894, and that the benefits assessed to said lot were the sum of $149.00. And the defendant further avers that in the year 1895, the said assessor being required by law to again list said lot No. 11 for taxation, he listed the same at its cash value in the sum of $295.00. And she avers that the city of Huntington, Indiana, ratified and adopted said valuation of $295.00 for said lot by entering the same on the tax duplicate of said city of Huntington, Indiana, at the sum of $295.00 and has kept the same on the tax duplicate of the city of Huntington, Indiana, each and every year since 1895, at $295.00.

And she further avers that said William street is not a thoroughfare or highway which leads to any village or town beyond the city of Huntington, but that it ends less than three-fourths of a mile from the city limits of said city at three or four slaughterhouses.

Wherefore the defendant says that the enforcement of said resolution, so far as the same affects said lot No. 11, in Schaefer's addition to the city of Huntington, Indiana, and the assessment of $149.00 as benefits against said lot is a taking of a lien thereof against said lot No. 11, in Schaefer's addition to the city of Huntington, Indiana, by law without a just compensation and that the foreclosure of the lien for the assessment of the benefits sought to be foreclosed by the

plaintiffs will work an appropriation of this defendant's real
109 estate without any return therefor and will work a confiscation
of the same and she therefore asks that the court declare her said real estate free from any lien for the benefits of the improvement of said William street, and that she have and recover her costs herein.

9th par. of answer.

And for a 9th paragraph of answer the defendant, Hannah Schaefer, says that she is the owner of lot No. 13 in Schaefer's addition to the city of Huntington, Indiana; that the resolution of the common council of the city of Huntington, Indiana, for the improvement of William street along the front line of lot No. 13 of Schaefer's addition to the city of Huntington, Indiana, by paving the same with brick, as set out in plaintiff's transcript, so far as the same affects said lot 13, and the assessment of benefits for said improvement of William street to said lot No. 13 and the lien thereof sought to be created and foreclosed as set out in the affidavit of the plaintiff for a precept as set out in the plaintiff's transcript therein in the sum of \$149.00, will work an appropriation on said real estate without any return therefor, a taking of defendant's said real estate by law without just compensation and will work an *appropriation on said real estate without any return thereon, a taking of defendant's real estate by law without just compensation, and will work an* exaction, extortion, and confiscation of the defendant's real estate, in this, that said real estate was duly listed for taxation by the assessors of Huntington township, in Huntington county, Indiana, in the year 1891, and just prior to the making of said improvement, at the valuation of \$210.00. It was the duty of the assessor of Huntington township, to list said real estate at its cash value. That the sum of \$210.00 was the cash value of said real estate and the defendant avers
that said city of Huntington adopted said valuation of \$210.00,
110 and entered the same on the tax duplicate of said city of Huntington,
at \$210.00, *and entered the same on the tax duplicate of said city of Huntington, at \$210.00* for said lot No. 13, in Schaefer's addition to the city of Huntington, Indiana. And the defendant further avers that the said improvement of William street in the said city of Huntington was fully completed in the year 1894, and that the benefits assessed to said lot was the sum of \$149.00. And the defendant further avers that in the year 1895, the said assessor required by law again to list said lot for taxation, listed the same at its cash value in the sum of \$215.00, and she avers that the city of Huntington ratified and adopted said valuation of \$215.00 for said lot by entering the same on the tax duplicate of the city of Huntington, Indiana, at the sum of \$215.00, and has kept the same on the tax duplicate of the city of Huntington, Indiana, each and every year since the year of 1895, at \$215.00.

She further avers that the said William street is not a thoroughfare or highway which leads to any village or town beyond the city of Huntington, but that it ends less than three-fourths of a mile from the city limits of said city at three or four slaughter-houses.

Wherefore the defendant says that the enforcement of said resolution, so far as the same affects the lot No. 13, in Schaefer's addition to the city of Huntington, Indiana, and the assessment of $149.00 as benefits against said lot is a taking of a lien thereon against said lot No. 13, in Schaefer's addition to the city of Huntington, Indiana, by law, without just compensation and that the foreclosure of the lien for the assessment of the benefits sought to be foreclosed by the plaintiffs will work an appropriation of this defendant's real estate without any return therefor, and will work a
confiscation of the same, and she asks that the court declare
111 her said real estate free from any lien for benefits on the
improvement of said William street, and that she have and
recover costs herein.

10th par. of answer.

And for a 10th paragraph of answer, the defendant, Hannah Schaefer, says she is the owner of lot No. 14, in Schaefer's addition to the city of Huntington, Indiana; that the resolution of the common council of the city of Huntington, Indiana, for the improvement of William street along the front line of lot No. 14, in Schaefer's addition to the city of Huntington, Indiana, by paving the same with brick, as set out in plaintiff's transcript, so far as the same affects said lot No. 14, and the assessment of benefits for said William street to said lot No. 14, and the lien hereof sought to be created and foreclosed as set out in the affidavit of the plaintiff for a precept as set out in plaintiff's transcript therein in the sum of $149.00, will work an appropriation of said real estate without any return therefor, a taking of defendant's real estate by law without just compensation and will work an exaction, extortion, and confiscation of the defendant's real estate, in this, that said real estate was duly listed for taxation by the assessors of Huntington township, in Huntington county, Indiana, in the year 1891, and just prior to the making of said improvement at the valuation of $205.00. It was the duty of said assessor of Huntington township to list said real estate at its cash value. That said sum of $205.00 was the cash value of said real estate, and the defendant avers that the said city of Huntington, Indiana, adopted said valuation of $205.00 and entered the same on the tax duplicate of said city of Huntington at $205.00 for said lot No. 14 in Schaefer's addition to the city of Huntington, Indiana. And the defendant further avers that the said improvement of
William street in said city of Huntington, was fully completed
112 in the year 1894 and that the benefits assessed to said lot
No. 14 was the sum of $149.00. And the defendant further avers that in the year 1895, the said assessor being required by law again to list said lot for taxation, he listed the same at its cash value in the sum of $210.00, and she avers that the city of Huntington ratified and adopted said valuation of $210.00, for said lot by entering the same on the tax duplicate of the city of Huntington, Indiana,

at the sum of $210.00, and has kept the same on the tax duplicate of the city of Huntington, Indiana, each and every year since the year 1895, at $210.00.

And she further avers that said William street is not a thoroughfare or highway, which leads to a village or town beyond the city of Huntington, but that it ends less than three-fourths of a mile from the city limits of said city at three or four slaughter-houses.

Wherefore the defendant says that the enforcement of said resolution so far as the same affects said lot No. 14, in Schaefer's addition to the city of Huntington, Indiana, and the assessment of $149.00 as benefits against said lot is a taking of a lien against said lot No. 14 in Schaefer's addition to the city of Huntington, Indiana, by law, without just compensation and that therefore foreclosure of the lien for the assessment of the benefits sought to be foreclosed by the plaintiffs, will work an appropriation of this defendant's real estate without any return therefor, and will work a confiscation of the same, and she asks that the court declare her real estate free from any lien for benefits of the improvement of said William street and that she have and recover her costs herein.

11th par. of answer.

113 And for an 11th paragraph of answer the defendant, Hannah Schaefer, says that she is the owner of lot No. 15, in Schaefer's addition to the city of Huntington, Indiana; that the resolution of the common council of the city of Huntington, Indiana, for the improvement of William street along the front line of lot No. 15 of Schaefer's addition to the city of Huntington, Indiana, by paving the same with brick, as set out in the plaintiff's transcript, so far as the same affects said lot No. 15 and the assessment of benefits for said improvement of said William street to said lot No. 15, and the lien thereof sought to be created and foreclosed as set out in the affidavit of the plaintiff for a precept as set out in the plaintiff's transcript herein in the sum of $149.00 will work an appropriation of said real estate without any return therefor, a taking of defendant's said real estate by law without just compensation, and will work an exaction, extortion and confiscation of the defendant's real estate in this, that said real estate was listed for taxation by the assessor of Huntington township, in Huntington county, Indiana, in the year 1894, and just prior to the making of said improvement, at the valuation of $200.00. That it was the duty of the city assessor of Huntington township to list said real estate at its cash value; that the said sum of $200.00 was the cash value of said real estate and the defendant avers that the said city of Huntington adopted said valuation of $200.00 and entered the same on the tax duplicate of said city of Huntington at $200.00 for said lot No. 15 in Schaefer's addition to the city of Huntington, Indiana. And the defendant further avers that the said improvement of William street in said city of Huntington was fully completed in the year 1894, and the benefits assessed to said lot *was* $149.00. And the defendant further avers that in the year 1895, the said assessor being required by law, again to list said lot for

taxation, he listed the same at its cash value in the sum of
114 $205.00, and she further avers that the said city of Huntington, ratified and adopted said valuation of $205.00 for said lot by entering the same on the tax duplicate of the city of Huntington, Indiana, at the sum of $205.00, and has kept the same on the tax duplicate of the city of Huntington, Indiana, each and every year since the year of 1895, at $205.00.

And she further avers that William street is not a public thoroughfare or highway, which leads to any village or town beyond the city of Huntington, but that it ends less than three-fourths of a mile from the city limits of said city at three or four slaughter-houses.

Wherefore the defendant says that the enforcement of said resolution, so far as the same affects said lot No. 15, in Schaefer's addition to the city of Huntington, Indiana, and the assessment of $149.00 as benefits against said lot, is a taking of a lien against said lot No. 15 in Schaefer's addition to the city of Huntington, Indiana, by law, without just compensation and that the foreclosure of the lien for the assessment of the benefits sought to be foreclosed by the plaintiffs will work an appropriation of this defendant's said real estate without any return therefor, and will work a confiscation of the same, and she asks that the court declare her said real estate free from any lien for benefits of the improvement of said William street and that she have and recover her costs herein.

12th par. of answer.

And for a 12th paragraph of answer the defendant, Hannah Schaefer, says that she is the owner of lot No. 16 in Schaefer's addition to the city of Huntington, Indiana; for the improvement of William street along the front line of lot No. 16 of Schaefer's addition to the city of Huntington, Indiana, by paving the same with brick, as set out in the plaintiff's transcript, so far as the same affects said lot No. 16, in Schaefer's
115 addition to the city of Huntington, and the assessment of the benefits for said improvement of said William street to said lot No. 16 and the lien therefor sought to be created and foreclosed as set out in the affidavit of the plaintiff for a precept as set out in the plaintiff's transcript herein in the sum of $149.00 will work an appropriation of said real estate without any return therefor, a taking of defendant's said real estate by law without just compensation and will work an exaction, extortion, and confiscation of the defendant's said real estate, in this, that the said real estate was duly listed for taxation by the assessor of Huntington township, in Huntington county, Indiana, in the year 1894, and just prior to the making of said improvement at the valuation of $125.00. That it was the duty of said assessor of Huntington township to list said real estate at its cash value. That said sum of $125.00 was the cash value of said real estate and the defendant avers that the said city of Huntington adopted said valuation of $125.00, and entered the same on the tax duplicate of said city of Huntington at $125 for said lot No. 16, in Schaefer's addition to the city of Huntington,

Indiana. And the defendant further avers that the said improvement of William street in the said city of Huntington, was fully completed in the year 1894, and that the benefits assessed to said lot were the sum of $149.00. And the defendant further avers that in the year 1895, the said assessor being required to list said lot for taxation, he listed the same at the cash value in the sum of $130.00, and she avers that the said city ratified and adopted said valuation of $130.00 for said lot by entering the same on the tax duplicate of the city of Huntington, Indiana, at the sum of $130.00 and has kept the same on the tax duplicate of the city of Huntington each and every year since the year 1895, at $130.00.

116 And she further avers that said William street is not a public thoroughfare or highway which leads to any village or town beyond the city of Huntington, but that it ends less than three-fourths of a mile from the city limits of said city at three or four slaughter-houses.

Wherefore the defendant says that the enforcement of said resolution, so far as the same affects said lot No. 16 in Schaefer's addition to the city of Huntington, Indiana, and the assessment of $149.00 as benefits against said lot No. 16 is a taking of a lien therefor against said lot No. 16 in Schaefer's addition to Huntington, Indiana, by law without just compensation and that the foreclosure of the lien for the assessment of the benefits sought to be foreclosed by the plaintiffs will work an appropriation on said defendant's real estate without return therefor and will work a confiscation of the same, and she asks that the court declare her said real estate free from any lien or benefits of the improvement of William street, and that she have and recover her costs herein.

117 And the plaintiffs file their separate and several demurrers to each paragraph of said additional answer, to wit:—

Demurrer of Pl'ffs to Answer.

STATE OF INDIANA, }
Huntington County. }

WERLING & DRAPER }
vs.
HANNAH SCHAEFER. }

Come now the plaintiffs and demur to each separate paragraph of defendant's answer and for a cause says that neither of said paragraphs state facts sufficient to constitute a cause of defense.

HART & CLINE
Att'ys for Pl'ffs.

And also file their motion to strike out parts of answer, to wit:

Motion to Strike Out Parts of Answer.

STATE OF INDIANA,
County of Huntington.

In the Huntington Circuit Court, Jan. Term, 1899.

WERLING ET AL.
vs.
HANNAH SCHAEFER.

The plaintiff moves the court to strike out that part of the paragraph- 8th, 9th, 10th, beginning near the end of the 15th line with the word "that" and ending with the word "Indiana" at the beginning of the 25th line.

And that part of same paragraphs beginning with the word "And" near the middle of the 38th line and ending with the word "houses" at the end of the 41st line.

W. H. HART
JOHN Q. CLINE,
Att'ys for Pl'ff.

118 And afterwards to wit, at a regular term of the circuit court of Huntington county in the State of Indiana, begun and held at the court-house in the city of Huntington in said county and State aforesaid, on *the* April 10th, 1899, the same being the time fixed by law for holding a term of said court and before Hon. Jabez T. Cox, of the 51st judicial circuit of Indiana, and special judge of the Huntington circuit court of Huntington county in the State of Indiana, the following proceedings were had in the above-entitled cause, as the same appears of record in the order books of said court on the dates respectively indicated, to wit:

Dismissal of Appeal as to Lot 17.

WEDNESDAY, *May* 24, 1899—39th Day.

JULIUS WERLING ET AL.
vs. No. 5616.
HANNAH SCHAEFER ET AL.

Come the parties by their attorneys, and the defendant dismiss her appeal as to lot No. 17 and withdraws the 4th and 5th paragraphs of her answer.

And the defendant Martin B. Schaefer files his separate answer in disclaimer, to wit:

Answer of Martin B. Schaefer.

STATE OF INDIANA,
Huntington County.

In the Huntington Circuit Court, April Term, 1899.

JULIUS WERLING ET AL.
vs.
HANNAH D. SCHAEFER and MARTIN B. Schaefer.
Answer of Martin B. Schaefer.

Martin B. Schaefer, one of the defendants in the above-entitled cause of action, disclaims any interest in the above-entitled cause of action and asks judgment for his costs.

SAYLER & SAYLER AND
S. M. SAYLER AND
B. F. IBACH,
Att'ys for Def't.

119 And the defendant, Hannah Schaefer, files her 13th, 14th 15th, 16th and 17th, and 18th paragraphs of answer, to wit:

13th par. of answer.

And for a 13th paragraph of answer, the appellant Hannah Schaefer says that she is a citizen of the United States of America and a citizen of the State of Indiana; says that she is the owner in fee-simply of lot 11 in Schaefer's addition to the city of Huntington, Indiana. That William street in said city runs along the front line of said lot. That the improvement of said William street along the front line of said lot was ordered and sought to be made in accordance with the provisions of the law of the State of Indiana, approved the 8th day of March, 1889, and commonly known as the Barrett law. That the said lot No. 11 in Schaefer's addition to the city of Huntington, Indiana, is 60 feet wide along William street and runs back from said street a distance of 132 feet. The value of said lot before said improvement was made (was) at least $140.00; that after said improvement as set out in the plaintiff's transcript, it was $140.00. And that the same is now $140.00. That the assessments of benefits against her said lot 11 was estimated by the city civil engineer of the city of Huntington, Indiana, as follows, to wit:

1st, the total of said improvement, second, the average cost per running — in front of the whole length of said William street improvement, third, the name of each property on that part of William street improved. Fourth, the number of front feet owned by the respective property-owners on said William street so improved. Fifth, the amount of such cost for improvement due upon each lot or parcel of ground bordering on said street which amount was ascertained and fixed by multiplying the average cost per running front foot by the

number of running front feet of the several lots and parcels of
120 ground respectively. Sixth, the full description together with
the name of each lot or parcel of ground bordering on said William street so improved. All of which fully appears by reference to the report of the city civil engineer of the city of Huntington, as set out in the transcript herein in this cause to which report the defendant Hannah Schaefer makes reference. She says that over her objections, which the common council refused to hear, the common council refused to hear her objections and disregarded them and adopted the said report of the city civil engineer. She says that the assessment against said lot No. 11 in Schaefer's addition as fixed by said report and adopted by the common council of the city of Huntington i*n* the sum of $149.00. And was made on the basis of $2.48⅓ per front foot of said lot No. 11. She says that said William street is not a thoroughfare or highway which leads to any village or town or city beyond the city of Huntington; that the same is not a traveled highway for any extensi*on* scope of country, and that there is not and never has been any heavy hauling thereon. That said William street is the outlet of only 4 or 5 small farms beyond the city limits of Huntington, and that it ends less than ¾ of a mile from the city limits at 3 or 4 slaughter-houses. She says that the real estate along and about said William street in the vicinity of said lot No. 11 is used largely for agricultural purposes and for vegetable gardens, and that no streets are improved in the vicinity of said lot No. 11 with sidewalks except said William street. And that said lot No. 11 is in very near proximity to the corporation line of the city of Huntington. She says that all of the lots assessed along said William street were assessed for said improvement at the rate of $2.48⅓ per running front foot without taking into con-
sideration the location of any lot, its depth from the street
121 line, its value, or any special benefits accruing thereto by
reason of said improvement. She says that along said street there is real estate which is reasonably worth $20.00 per running foot and that the value of said lot No. 11 per running front foot is not to exceed $2.33, and she says that the said assessment being the same on every several lot and parcel of ground per running foot is unfair, unjust, and in contravention of her rights as a citizen of the United States and of the State of Indiana. She avers that the value of the said lot No. 11 before said improvement was $140.00, and that after the making of said improvement it was $140.00, and now is $140.00, and that an assessment of $149.00 against said lot No. 11 is unfair, unjust, and in contravention of her rights as a citizen of the United States and of the State of Indiana. She further says that the physical conditions surrounding all of the real estate along said William street except location *is* the same and that no special benefit can accrue to said lot No. 11 other than that which will accrue to all of the real estate abutting on said William street, and that the assessment of $2.48⅓ per running foot is unjust, unconstitutional and in contravention of her right*d* as a citizen of the United States of America and of the State of Indiana. She further avers that said assessment of $149.00 is more than the full value of said

lot No. 11 and that to sustain the same and order its collection would work a confiscation of her said lot No. 11 and would be an appropriation of her said lot No. 11 for a public use without compensation therefor. She further avers that the said law does not provide for any inquiry of benefits by any court, but arbitrarily fixes the benefits, the average cost per running front foot of said improvement, and that the common council of the city of Huntington adopted such rule in the assessment of benefits and that no
122 hearing for the adjustment of inequalities has been had and
that it is denied to the appellant and that the same results in a taking of the appellant's property without due process of law and is in contravention and derogation of her rights as a citizen of the United States of America and of the State of Indiana. Wherefore she asks judgment for her costs and all other proper relief.

14th par. of answer.

And for a 14th and further paragraph of answer the appellant Hannah Schaefer says that she is a citizen of the United States of America and a citizen of the State of Indiana. She says that she is the owner in fee-simple of lot No. 13 in Schafer's addition to the city of Huntington, Indiana; that William street in said city runs along the front line of said lot; that the improvement of said William street along the front line of said lot was ordered and sought to be made in accordance with the provisions of a law of the State of Indiana, approved the 8th day of March, 1899, and commonly known as the Barrett law. That said lot No. 13 in Schaefer's addition to the city of Huntington, Indiana, is 60 feet wide along William street and runs back from said street a distance of 132 feet. That the value of said lot before said improvement was made was at least $150.00; that after said improvement as set out in the plaintiff's transcript was $130.00, and that the same is now the sum of $130.00. That the assessment of benefits against her said lot No. 13 was estimated by the city civil engineer of the city of Huntington, Indiana, as follows, to wit: First, the total cost of said improvement. Second, the average cost per running foot of the whole length of said William street improved. Third, the name of each property-owner on that part of William street improved. Fourth, the number of front feet owned by the respective property-owners on said William street so improved. Fifth, the amount
123 of such cost for improvement due upon each lot or parcel of
ground bordering on said William street as improved, which amount was ascertained and fixed by multiplying the average cost per running front foot by the number of running front feet of the several lots and parcels of ground respectively. Sixth, the full description together with the owner's name of each lot or parcel of ground bordering on said William street so improved. All of which fully appears by reference to the report of the city civil engineer of the city of Huntington as set out in the plaintiff's transcript herein in this cause to which report the defendant, Hannah Schaefer, makes reference. She says that over her objections which the common council refused to hear and which it disregarded, the common coun-

cil adopted the said report of the city civil engineer. She says that the assessment against the said lot No. 13 as fixed by said report and adopted by the common council of the city of Huntington, is the sum of $149.00, and was made on the basis of $2.48⅓ per front foot of said lot No. 13. She says that said William street is not a thoroughfare or highway which leads to any village or town or city beyond the city of Huntington. That the same is not a traveled highway for any extensive scope of country and that there is not and never has been any heavy hauling thereon. That said William street is the outlet of only four or five small farms beyond the city limits of Huntington, and that it ends less than ¾ of a mile from the city limits at 3 or 4 slaughter-houses. She says that the real estate along and about said William street in the vicinity of said lot No. 13 is used largely for agricultural purposes and for vegetable gardens, and that no streets are improved in the vicinity of said lot No. 13 with sidewalks except said William street, and that said lot No. 13 is in
very near proximity to the corporation line of the city of
124 Huntington, which corporation line at said point is at least
a mile from the center of said city of Huntington. The population of said city does not exceed 10,000 people. She says that all of the lots assessed along said William street were assessed for said improvement at the rate of $2.48⅓ per running front foot without taking into consideration the location of any lot, its depth from the street line, its value or any special benefit thereto by reason of said improvement. She says that along said street there is real estate which is reasonably worth $20.00 per running front foot, and that the value of said lot No. 13 per running front foot is not to exceed $2.17 and she says that the said assessment being the same on every lot and parcel of ground per running front foot is unfair, unjust and in contravention of her rights as a citizen of the United States of America and of the State of Indiana. She avers that the value of said lot No. 13 before said improvement was $130.00, and that after the making of said improvement it was $130.00, and now is $130.00, and that an assessment of $149.00 against said lot No. 13 is unfair, unjust and in contravention of her right as a citizen of the United States and of the State of Indiana; she says that the physical conditions surrounding all of the real estate along said William street, except location, *is* the same and that no special benefit can accrue to said lot No. 13 other than that which will accrue to all of the real estate abutting on said William street, and that the assessment of $2.48⅓ per running front foot is unjust, unconstitutional, and in contravention of her right as a citizen of the United States of America and of the State of Indiana. She further avers that said assessment of $149.00 is more than the full value of said lot No. 13 and that to sustain the same and order its collection
would work a confiscation of her said lot No. 13 and would
125 be an appropriation of her said lot No. 13 for a public use
without compensation therefor. She further avers that the said law does not provide for any inquiry of benefits by any court of record, but arbitrarily fixes as the benefits the average cost per running front foot of said improvement, and that the common

council of the city of Huntington adopted such rule in the assessment of benefits, and that no hearing for the adjustment of inequalities has been had, but that it is denied to the appellant and that the same results in a taking of appellant's property without due process of law, and is in contravention and derogation of her rights as a citizen of the United States of America, and of the State of Indiana.

Wherefore she asks judgment for her costs and for all other proper relief.

15th par. of answer.

And for a 15th and further paragraph of answer the appellant, Hannah Schaefer, says that she is a citizen of the United States of America and a citizen of the State of Indiana. She says that she is the owner in fee-simple of lot No. 14 in Schaefer's addition to the city of Huntington, Indiana; that William street in said city runs along the front line of said lot; that the improvement of said William street along the front line of said lot was ordered and sought to be made in accordance with the provisions of a law of the State of Indiana approvee the 8th day of March, 1899, and commonly known as the Barrett law. That said lot No. 14 in Schaefer's addition to the city of Huntington, Indiana, is 60 feet wide along William street and runs back from said street a distance of 132 feet. That the value of said lot before said improvement was made was at least $125, that after said improvement as set out in the plaintiff's transcript, was $125.00 and that the same is now the sum of $125. That the assessment of benefits against her said lot No. 14 was estimated by
the city civil engineer of the city of Huntington, Indiana, as fol-
126 lows, to wit: First, the total cost of said improvement. Second,
the average cost per running front foot of the whole length of said William street improved. Third, the name of each property-owner on that part of William street improved. Fourth, the number of front feet owned by the respective property-owners on said William street so improved. Fifth, the amount of such cost for improvement due upon each lot or parcel of ground bordering on said William street as improved, which amount was ascertained and fixed by multiplying the average cost per running front foot by the number of running front feet of several lots and parcels of ground respectively. Sixth, the full description, together with the owner's name of each lot or parcel of ground bordering on said William street so improved. All of which fully appears by reference to the report of the city civil engineer of the city of Huntington, as set out in the plaintiff's transcript herein in this cause, to which report the defendant, Hannah Sshaefer, makes reference. She says that over her objections which the common council refused to hear and which it disregarded, the common council adopted the said report of the city civil engineer. She says that the assessment against the said lot No. 14 as fixed by said report and adopted by the common council of the city of Huntington, is the sum of $149.00, and was made on the basis of $2.48⅓ per front foot of said lot No. 14. She says that said William street is not a thoroughfare or highway which leads to

any village or town or city beyond the city of Huntington. That the same is not a traveled highway for any extensive scope of country, and that there is not and never has been any heavy hauling thereon. That said William street is the outlet of only four or five small farms beyond the city limits of Huntington and that it ends less than ¾ of a
mile from the city limits at 3 or 4 slaughter-houses. She says
127 that the real estate along and about said William street in the
vicinity of said lot No. 14 is used largely for agricultual purposes and for vegetable gardens, and that no streets are improved in the vicinity of said lot No. 14 with sidewalks except said William street, and that said lot No. 14 is in near proximity to the corporation line of the city of Huntington, which corporation line at said point is at least a mile from the center of said city of Huntington. The population of said city does not exceed 10,000 people. She says that all of the lots assessed along said William street were assessed for said improvement at the rate of $2.48⅓ per running front foot without taking into consideration the location of any lot, its depth from the street line, its value or any special benefit thereto by reason of said improvement. She says that along said street there is real estate which is reasonably worth $20.00 per running front foot and that the value of said lot No. 14 per running front foot is not to exceed $2.08⅓ and she says that the said assessment being the same on every lot and parcel of ground per running front foot is unfair, unjust, and in contravention of her right as a citizen of the United States of America and of the State of Indiana. She avers that the value of said lot No. 14 before said improvement was $125.00, and that after the making of said improvement it was $125.00, and now is $125.00, and that an assessment of $149.00 against said lot No. 14 is unfair, unjust, and in contravention of her rights as a citizen of the United States and of the State of Indiana. She further says that the physical conditions surrounding all of the real estate along said William street, except location, *is* the same and that no special benefit can accrus to said lot No. 14 other than that which will acurde to all of the real estate abutting on said William
street, and that the assessment of $2.48⅓ per running
128 front foot is unjust, unconstitutional and in contravention of
her rights as a citizen of the United States of America and of the State of Indiana. She further avers that said assessment of $149.00 is more than the full value of said lot No. 14 and that to sustain the same and order its collection would work a confiscation of her said lot No. 14 and would be an appropriation of her said lot No. 14 for a public use without compensation therefor. She further avers that the said law does not provide for any inquiry of benefits by any court of record, but arbitrarily fixes as the benefits the average cost per running front foot of said improvement, and that the common council of the city of Huntington adopted such rule in the assessment of benefits and that no hearing for the adjustment of inequalities has been had, but that it is denied to the appellant and that the same results in a taking of appellant's property without due process of law, and is in contravention and derogation of her rights

as a citizen of the United States of America and of the State of Indiana.

Wherefore she asks judgment for her costs and for all other proper relief.

16th par. of answer.

And for a 16th and further paragraph of answer appellant Hannah Schaefer says that she is a citizen of the United States of America and of the State of Indiana. She says that she is the owner in fee-simple of lot No. 15 in Schaefer's addition to the city of Huntington, Indiana; that William street in said city runs along the front line of said lot; that the improvement of said William street along the front line of said lot was ordered and sought to be made in accordance with the provisions of a law of the State of Indiana approved the 8th day of March, 1899, and commonly known as the Barrett law. That said lot No. 15 in Schaefer's addition to the city of Huntington, Indiana, is 60 feet wide along William street
129 and runs back from said street a distance of 132 feet. That
the value of said lot before said improvement was made was at least $120.00; that after said improvement as set out in the plaintiff's transcript was $120.00, and that the same is now the sum of $120.00. That the assessment of benefits against the said lot No. 15 was estimated by the city civil engineer of the city of Huntington, Indiana, as follows, to wit: First, the total cost of said improvement. Second, the average cost per running front foot of the whole length of said William street improved. Third, the name of each property-owner on that part of William street improved. Fourth, the number of front feet owned by the respective property-owners on said William street so improved. Fifth, the amount of such cost for improvement due upon each lot or parcel of ground bordering on said William street as improved, which amount was ascertained and fixed by multiplying the average cost per running front foot of the several lots and parcels of ground respectively. Sixth, the full description together with the owner's names of each lot or parcel of ground bordering on said William street so improved. All of which fully appears by reference to the report of the city civil engineer of the city of Huntington, as set out in the plaintiff's transcript herein in this cause, to which report the defendant, Hannah Schaefer, makes reference. She says that over the objection which the common council refused to hear and which it disregarded, the common council adopted the same report of the city civil engineer. She says that the assessment against the said lot No. 15, as fixed by said report and adopted by the common council of the city of Huntington is the sum of $149.00, and was made on the basis of $2.48⅓ per front foot of said lot No. 15. She says that said William street is not a thoroughfare or highway which leads to any village, town or city beyond the
130 city of Huntington. That the same is not a traveled high-
way for any extensive scope of country, and that there is not and never has been any heavy hauling thereon. That said street is the outlet of only four or five small farms beyond the city limits of

Huntington, and that it ends less than ¾ of a mile from the city limits at 3 or 4 slaughter-houses. She says that the real estate along and about said William street in the vicinity of said lot No. 15 is used largely for agricultural purposes and for vegetable gardens, and that no streets are improved in the vicinity of said lot No. 15 with sidewalks except said William street, and that said lot No. 15 is in very near proximity to the corporation line *to* the city of Huntington, which corporation line at said point is at least a mile from the center of the city of Huntington. The population of said city does not exceed 10,000 people. She says that all of the lots assessed along said William street were assessed for said improvement at the rate of $2.48⅓ per running front foot without taking into consideration the location of any lot, its depth from the street line, its value or any special benefit thereto by reason of said improvement. She says that along said street there is real estate which is reasonably worth $20.00 per running front foot, and that the value of said lot No. 15 per running front foot is not to exceed $2.00, and she says that the said assessment being the same on every lot and parcel of ground per running front foot is unfair, unjust, and in contravention of her right as a citizen of the United States of America and of the State of Indiana. She avers that the value of said lot No. 15 before said improvement was $120.00, and that after the making of said improvement it was $120.00, and now is $120.00, and that an assessment of $149.00 against said lot No. 15 is unfair, unjust, and in contravention of her right as a citizen of the United States 131 and of the State of Indiana. She further avers that the physical condition surrounding all of the real estate along said William street, except location, is the same, and that no special benefit can accrue to said lot No. 15 other than that which will accrue to all real estate abutting on said William street, and that the assessment of $2.48⅓ per running front foot is unjust, unconstitutional and in contravention of her rights as a citizen of the United States of America and of the State of Indiana. She further avers that said assessment of $149.00 is more than the full value of said lot No. 15, and that to sustain the same and order its collection would work a confiscation of her said lot No. 15 and would be an appropriation of her said lot No. 15 for a public use without compensation therefor. She further avers that the said law does not provide for any inquiry of benefits by any court of record, but arbitrarily fixes as the benefits the average cost per running front foot of said improvement, and that the common council of the city of Huntington adopted such rule in the assessment of benefits, and that no hearing for the adjustment of inequalities has been had, but that it is denied to the appellant, and that the same results in a taking of appellant's property without due process of law and is in contravention and derogation of her rights as a citizen of the United States of America and of the State of Indiana.

Wherefore she asks judgment for her costs and for all other proper relief.

17th par. of answer.

And for a 17th and further paragraph of answer the appellant, Hannah Schaefer, says that she is a citizen of the United States of America and a citizen of the State of Indiana. She says that she is the owner of lot No. 16 in Schaefer's addition to the city of Huntington, Indiana. That William street in said city runs along 132 the frone line of said lot, was ordered to be made in accordance with the provisions of a law of the State of Indiana approved the 8th day of March, 1889, and commonly known as the Barrett law. That said lot No. 16 in Schaefer's addition to the city of Huntington, Indiana, is 60 feet wide along William street and runs from said street a distance of 132 feet. That the value of said lot before said improvement was made was at least $110.00; that after said improvement as set out in the plaintiff's transcript was $110.00, and that the same is now the sum of $110. That the assessment of benefits against her said lot No. 16 was estimated by the city civil engineer of the city of Huntington, Indiana, as follows, to wit: Forst, the total cost of said improvement. Second, the average cost per running front foot of the whole length of said improvement street improved. Third, the name of each property-owner on that part of William street improved. Fourth, the number of front feet owned by the respective property-owners on said William street so improved. Fifth, the amount of such cost for improvement due upon each lot or parcel of ground bordering on said William street as improved, which amount was ascertained and fixed by multiplying the average cost per running front foot by the number of running front feet of several lots and parcels of ground respectively. Sixth, the full description, together with the owner's name of each lot or parcel of ground bordering on said William street so improved. All of which fully appears by reference to the report of the city civil engineer of the city of Huntington, as set out in the plaintiff's transcript herein in this cause, to which report the defendant makes reference. She says that over her objections which the common council refused to hear and which it disregarded, the common council adopted the report of the city civil engineer. She says that the assessment against the said lot No. 16 as fixed by the 133 said report and adopted by the common council of the city of Huntington, is the sum of $149.00, and was made on the basis of $2.48 ⅓ per front foot of said lot No. 16. She says that said William street is not a thoroughfare or highway which leads to any village or town or city beyond the city of Huntington. That the same is not a traveled highway for any extensive scope of country; that there is not and never has been any heavy hauling thereon. That said William street is the outlet of only four or five small farms beyond the city limits of Huntington and that it ends less than ¾ of a mile from the city limits at 3 or 4 slaughter-houses. She says that the real estate along and about said William street in the vicinity of the said lot No. 16 is used largely for agricultural purposes and for vegetable gardens and that no streets are improved in the vicinity of said lot No. 16 with sidewalks except said William street, and that said lot No. 16 is in very near proximity to the corporation line of said city of Huntington, which corporation line at said point is at least one mile from the center of said city of Huntington. The population of said city does not exceed 10,000 people. She says that all of the lots assessed along said William street were assessed for said improvement at the rate of $2.48⅓ per running front foot without taking into consideration the location of any lots, its depth from the street line, its value or any special benefit thereto by reason of said improvement. She says that along said street there is real estate which is reasonably worth $20.00 per running front foot, and that the value of said lot No. 16 per running front foot is not to exceed $1.82, and she says that said assessment being the same on every lot and parcel of ground per running front foot is unfair, unjust, and in contravention of her rights as a citizen of the United States of America and of the State of Indiana.

134 She avers that the value of said lot No. 16 before said improvement was $110, and that after the making of said improvement it was $110, and now is $110, and that an assessment of $149.00 against said lot No. 16 is unfair, unjust, and in contravention of her rights as a citizen of the United States of America and of the State of Indiana. She says further that the physical conditions surrounding all of the real estate along said William street, except location, are the same and that no special benefits can accrue to said lot No. 16 other than that which will accrue to all of the real estate abutting on said William street, and that the assessment of $2.48⅓ per running front foot is unjust, unconstitutional and in contravention of her rights as a citizen of the United States of America and of the State of Indiana. She further avers that said assessment of $149.00 is more than the value of said lot No. 16, and that to sustain the same and order its collection would work a confiscation of her lot No. 16 and would be an appropriation of her said lot No. 16 for a public use without compensation therefor. She further avers that the said law does not provide for any inquiry of benefits by any court of record, but arbitrarily fixes as the benefits the average cost per running foot of said improvement, and that the common council of the city of Huntington adopted such rule in the assessment of benefits, and that no hearing for the adjustment of any inequalities has been had, but that it is denied to the appellant and that the same results in the taking of appellant's property without due process of law and is in contravention in derogation of her rights as a citizen of the United States of America and of the State of Indiana.

Wherefore she asks judgment for her costs and for all other proper relief.

SAYLER & SAYLER AND
S. M. SAYLER AND
B. F. IBACH,
For Defendant Hannah Schaefer.

135 And the plaintiffs file their demurrer to each paragraph of the answer, to wit:

Demurrer of Pl'ffs to Answer.

STATE OF INDIANA,
Huntington County.

In the Huntington Circuit Court, April Term, 1899.

JULIUS WERLING ET AL.
vs.
HANNAH SCHAEFER ET AL.
No. 5616.

Come the parties by their attorney, and the plaintiff files his demurrer to each paragraph of the answer separately and severally, to wit:

STATE OF INDIANA,
Huntington County.

In the Huntington Circuit Court, April Term, 1899.

JULIUS WERLING ET AL.
vs.
HANNAH SCHAEFER ET AL.
No. 5616.

Comes now the plaintiffs and demur separately and severally to each paragraph of defendant's answer, on the ground that neither of said paragraphs of answer state facts sufficient to constitute a cause of defense to plaintiffs' complaint.

WILLIAM H. HART,
JOHN O. CLINE,
Att'ys for Plaintiff.

136 *Demurrer Sustained, Exception, Refusal to Plead, Judgment.*

THURSDAY, *May* 25, 1899—40th Day.

JULIUS WERLING, HENRY DRAPER
vs.
HANNAH SCHAEFER, MARTIN B. SCHAEFER.
No. 5616.

Come the plaintiffs by J. Q. Cline and W. H. Hart their attorneys, and come the defendants by Sayler & Sayler, their attorneys, and the court being advised in the premises, sustains the demurrer to the 1st, 2nd, 3rd, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, and 17th paragraphs of answer, and each of them, to which the defendant, Hannah Schaefer, excepts, and the said defendant refusing to plead further the court finds for the plaintiffs on said demurrer and assesses their damages in the sum of nine hundred and seventy-six dollars ($976.00) as against defendant Hannah Schaefer. And the court further finds for the defendant Martin B. Schaefer and that as to him the plaintiffs take nothing, and it is adjudged by the court that he recover of the plaintiffs his costs taxed at $—. It is further considered and adjudged by the court that the plaintiffs recover of the defendant, Hannah Schaefer, the sum of nine hundred and seventy-six dollars ($976.00). And their costs and charges in this behalf laid out and expended, taxed at $—.

And it is further considered, ordered, adjudged and decreed by the court that the foregoing judgment is a specific lien upon the following-described real estate in Huntington county, Indiana, to wit:

Lots numbered 11, 13, 14, 15, and 16 in Schaefer's addition to the city of Huntington, and that the equity of redemption of the defendant, Hannah Schaefer, and all persons claiming from
137 under or through her, in and to said real estate above described, be and the same is hereby forever barred and foreclosed and that the real estate hereinbefore described and all the rights, title, interest and claim of the defendant and all persons claiming from under or through her, in and to the same, or so much thereof as may be necessary for that purpose, shall be sold by the sheriff of the said county of Huntington, in the State of Indiana, after duly advertising the same for three weeks successively in a newspaper published nearest to such lots as aforesaid, and by posting up written or printed notices thereof in at least three public places in the city of Huntington, in Huntington county, Indiana, in which city said lots are situate, and such sale shall be by public auction upon or near the said premises as provided by law, and the proceeds arising from such sale the sheriff is ordered and directed to apply in the manner following, to wit:—

First. To the payment of all costs accrued in this cause.

Second. To the payment of plaintiffs' judgment herein. The overplus, if any remaining after the payment of the foregoing judgment interest, and costs to be paid by the sheriff of this court for the use of the party lawfully authorized to receive the same.

It is further ordered by the court that a duly certified copy of this decree under the hand of the clerk and the seal of this court shall be sufficient authority to the sheriff to execute the same.

All of which is finally ordered, adjudged and decreed by the court.

90 *Days for Bill of Exceptions.*

To all of which the defendant, Hannah Schaefer, excepts and ninety (90) days are given to file bills of exceptions.

Appeal Prayed & Granted.

And the said defendant now prays an appeal to the supreme court of Indiana, which is granted. Bond is fixed in the sum of two thousand dollars ($2000.00). And thirty (30) days are given
138 to file the same, with Martin B. Schaefer and William H. Drover as sureties thereon, who are approved by the court as such sureties.

139 *Certificate of Clerk.*

STATE OF INDIANA, } *ss:*
Huntington County, }

I, Marion G. Wright, clerk of the circuit court of Huntington county, in the State of Indiana, do hereby certify that the above and foregoing is a full, true and complete transcript of all the papers filed, order-book entries and proceedings had in the above-entitled cause, as the same appears of record on file in my office.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed the seal of said court at my office in the city of Huntington, Indiana, on the 18th day of October, A. D. 1899.

MARION G. WRIGHT,
Clerk Huntington Circuit Court.

October 18, 1899, received of Hannah Schaefer, twenty-five dollars ($25.00) in full of costs for making this transcript.

M. G. WRIGHT, *Clerk H. C. C.*

140 *Assignment of Errors.*

STATE OF INDIANA:

In the Supreme Court.

HANNAH SCHAEFER, Appellant,
vs.
JULIUS WERLING, HENRY DRAPER, and MARTIN B. Schaefer, Appellees. } Assignment of Errors.

Appeal from the Huntington circuit court.

The appellant says that there is manifest error in the judgment and proceedings in this cause in this:—

1st. The amended complaint does not state facts sufficient to constitute a cause of action.

2nd. The court erred in overruling the motion to dismiss the amended complaint.

3rd. The court erred in overruling the demurrer to the amended complaint.

4th. The court erred in sustaining the demurrer to the first paragraph of the answer.

5th. The court erred in sustaining the demurrer to the second paragraph of answer.

6th. The court erred in sustaining the demurrer to the third paragraph of answer.

7th. The court erred in sustaining the demurrer to the 6th paragraph of answer.

8th. The court erred in sustaining the demurrer to the seventh paragraph of answer.

9th. The court erred in sustaining the demurrer to the eighth paragraph of answer.

10. The court erred in sustaining the demurrer to the ninth paragraph of answer.

141 11th. The court erred in sustaining the demurrer to the tenth paragraph of answer.

12th. The court erred in sustaining the demurrer to the eleventh paragraph of answer.

13th. The court erred in sustaining the demurrer to the twelfth paragraph of answer.

14th. The court erred in sustaining the demurrer to the thirteenth paragraph of answer.

15th. The court erred in sustaining the demurrer to the fourteenth paragraph of answer.

16th. The court erred in sustaining the demurrer to the fifteenth paragraph of answer.

17th. The court erred in sustaining the demurrer to the sixteenth paragraph of answer.

18th. The court erred in rendering judgment on the amended complaint.

19th. The court erred in sustaining the demurrer to the seventeenth paragraph of answer.

Wherefore, and because of these and other manifest errors the appellant prays a reversal of the judgment of said circuit court.

S. M. SAYLER AND
B. F. IBACH,
Attorneys for Appellant.

142 And on the same day a notice of the pendency of said appeal was issued, a copy of which, together with the sheriff's return, reads as follows:

Notice of Appeal.

State of Indiana to the sheriff of the supreme court, Greeting:

You are hereby commanded to notify Julius Werling, Henry Draper and Martin B. Schaefer that on the 4th day of November, 1899, Hannah Schaefer filed in the clerk's office of the supreme court of Indiana a transcript of the record and proceedings in a certain suit appealed from the Huntington circuit court, in which said Julius Werling, *et al.* were plaintiffs, and said Martin B. Shaefer *et al.* were defendants, and notify said appellees that at the expiration of thirty days from the date of service of this writ, said appeal will be submitted to said supreme court; and unless they appear at the supreme court room in Indianapolis, before said supreme court, and defend said appeal, the same will be proceeded upon in their absence. You are further commanded to make due return of this writ within ten days from date hereof.

[SEAL.] Witness, Robert A. Brown, clerk of said supreme court, and the seal thereof, this 4th day of November, A. D. 1899.

R. A. BROWN, *C. S. C.*

Came to hand November 7, 1899. Served on the within Julius Werling, Henry Draper by leaving a true and certified copy at their last and usual place of residence, and reading the same to and within the hearing of Martin B. Schaefer, this 8th day of November, 1899.

ALONZO A. CRANDAL, *Sheriff.*

143 And afterwards, to wit: on the 8th day of December, 1899, the same being the 11th judicial day of the November term, 1899, of said supreme court, the following further pleas and proceedings in said cause were had, to wit:

Submission of Cause.

Comes now the parties, by their counsel, and this cause is submitted to the court for judgment and decree, as provided by the act of the General Assembly of the State of Indiana, approved April 13, 1885, and the rules of said supreme court adopted May 1, 1889, in relation thereto.

And afterwards, to wit: on the 27th day of January, 1900, said day being the 54th judicial day of the November term, 1899, of said supreme court, the following further pleas and proceedings in said cause were had, to wit:

Filing of Brief for Appellant.

Comes now the appellant, by her counsel, and files her brief in the words and figures following: (Here insert.)

And afterwards, to wit: on the 23rd day of February, 1900, said day being the 77th judicial day of the November term, 1899, of said supreme court, the following further pleas and proceedings in said cause were had, to wit:

Filing of Brief for Appellees.

Comes now the appellees, by their counsel, and file their brief in the words and figures following: (Here insert.)

Opinion & Judgment of Supreme Court of State of Indiana.

And afterwards, to wit: on the 17th day of April, 1901, the same being the 123rd day of the November term, 1900, of said supreme court, in the case of Hannah Schaefer *vs.* Julius Werling, *et al.*, appealed from the Huntington circuit court, and being number 19,146, Hon. Alexander Dowling, chief justice, Hon. Leander J. Monks, Hon. James H. Jordan, Hon. John V. Hadley, Hon. Francis E. Baker, come the parties by their counsel, and the court being sufficiently advised in the premises, gave the following opinion and judgment pronounced by Baker, J.

144 HANNAH SCHAEFER
vs.
JULIUS WERLING ET AL. } No. 19146.

From the Huntington circuit court.

BAKER, *J.*:

As the ground for reversal, appellant contends that the "Barrett law" is unconstitutional. The majority of the court held otherwise in Adams *vs.* City of Shelbyville, 154 Ind. 467. On the authority of that decision, the judgment is affirmed.

It is therefore considered by the court that the judgment of the court below in the above-entitled cause, be in all things affirmed, at the cost of the appellant.

And it is further considered and adjudged by the court that the appellees recover of the appellant the sum of $— for their costs and charges in this behalf expended.

145 And afterwards, to wit: on the 6th day of June, 1901, the same being the 10th judicial day of the May term, 1901, of said supreme court, the following further pleas and proceedings were had in said cause, to wit:

Petition of Appellant for Rehearing.

Comes the appellant, by her counsel, and files her petition for a rehearing herein, and her brief on said petition, which petition is in the words and figures following:

STATE OF INDIANA:

In the Supreme Court, May Term, 1901.

HANNAH SCHAEFER, Appellant,
vs.
JULIUS WERLING ET AL., Appellees. }

Petition for rehearing.

The appellant prays the court to grant a rehearing to her in the above-entitled cause for the following reasons, to wit:

1. The appellant specifically argued each assignment of error, and the court erred in refusing *th* specifically pass upon and decide each assignment of error.

2. That the court in affirming the decision of the circuit court herein, erred in holding bad each of the appellant's several paragraphs of answer to the complaint of the appellees.

3. That the court, in affirming the decision of the circuit court herein, erred in sustaining the demurrer of the appellees to the 1st paragraph of the appellant's answer.

4. That the court, in affirming the decision of the circuit court herein, *h*erred in sustaining the demurrer of the appellees to the 2nd paragraph of the appellant's answer.

146 5. That the court, in affirming the decision of the circuit court herein, erred in sustaining the demurrer of the appellees to the 3rd paragraph of the appellant's answer.

6. That the court, in affirming the decision of the circuit court herein, erred in sustaining the demurrer of the appellees to the 6th paragraph of appellant's answer.

7. That the court, in affirming the decision of the circuit court herein, erred in sustaining the demurrer of the appellees to the 7th paragraph of the appellant's answer.

8. That the court, in affirming the decision of the circuit court herein, erred in sustaining the demurrer of the appellees to the 8th paragraph of the appellant's answer.

9. That the court, in affirming the decision of the circuit court herein, erred in sustaining the demurrer of the appellees to the 9th paragraph of the appellant's answer.

10. That the court, in affirming the decision of the circuit court herein, erred in sustaining the demurrer of the appellees to the 10th paragraph of the appellant's answer.

11. That the court, in affirming the decision of the circuit court herein, erred in sustaining the demurrer of the appellees to the 11th paragraph of answer.

12. That the court, in affirming the decision of the circuit court herein, erred in sustaining the demurrer of the appellees to the 12th paragraph of the appellant's answer.

13. That the court, in affirming the decision of the circuit court herein, erred in sustaining the demurrer of the appellees to the 13th paragraph of the appellant's answer.

14. That the court, in affirming the decision of the circuit court herein, erred in sustaining the demurrer of the appellees to the 14th paragraph of the appellant's answer.

15. That the court, in affirming the decision of the circuit court herein, erred in sustaining the demurrer of the appellees to
147 the 15th paragraph of the appellant's answer.

16. That the court, in affirming the decision of the circuit court herein, erred in sustaining the demurrer of the appellees to the 16th paragraph of the appellant's answer.

17. That the court, in affirming the decision of the circuit court herein, erred in sustaining the demurrer of the appellees to the 17th paragraph of the appellant's answer.

18. That the court erred in holding that the act of the General Assembly of the State of Indiana, approved March 8th, 1889, Acts of 1889, page 237, commonly known as the Barrett law, is constitutional.

S. M. SAYLER,
Attorney for Appellant.

148 *Petition for Rehearing Overruled.*

And afterwards, to wit: on the 20th day of June, 1901, the same being the 22nd judicial day of the May term, 1901, of said supreme court, the court being advised in the premises, overrules the petition for a rehearing, heretofore filed herein by the appellant.

149 And afterwards, to wit: On the 3rd day of August, 1901, the same being the 60th judicial day of the May term, 1901, of said supreme court, came again Hannah Schaefer, by her attorney, and filed in the office of the clerk of said supreme court a writ of error from the Supreme Court of the United States to the said supreme court of Indiana in this cause, said writ of error being hereto next below attached and being as follows:

Writ of Error to Supreme Court of U. S. and its Allowance.

150 UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the honorable the judges of the supreme court of the State of Indiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Indiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Hannah Schaefer appellant and Julius Werling Henry Draper and Martin B. Schaefer appellees wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; and wherein was drawn in question the construction of a clause of the Constitution, or 151 of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Hannah Schaefer as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 2nd day of August, in the year of our Lord one thousand nine hundred and one.

[Seal Circuit Court of the United States, District of Indiana.]

NOBLE C. BUTLER,
Clerk of the Circuit Court of the United States for the District of Indiana.

Allowed by
LEANDER J. MONKS,
Chief Justice of the Supreme Court of the State of Indiana.

152 And afterwards, to wit: on the 3rd day of August, 1901, the same being the 60th judicial day of the May term, 1901, of said supreme court, came again Hannah Schaefer, appellant herein, and filed in the office of the clerk of said supreme court her bond on appeal, in the penal sum of two thousand dollars ($2,000.00), with John J. Young and William H. Drover as sureties; which said bond is now taken and approved by Hon. Leander J. Monks, chief justice of the supreme court of Indiana, and is hereunto next below attached:

Appeal Bond and Approval.

153 Know all men by these presents, that we, Hannah Schaefer, as principal, and John J. Young and William H. Drover, as sureties, are held and firmly bound unto Julius Werling, Henry Draper and Martin B. Schaefer in the full and just sum of two thousand dollars, to be paid to the said Julius Werling, Henry Draper and Martin B. Schaefer their certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 2nd day of August, in the year of our Lord one thousand nine hundred and one.

Whereas, lately at a supreme court of the State of Indiana, in a suit depending in said court, between Hannah Schaefer, appellant, and Julius Werling, Henry Draper and Martin B. Schaefer, appellees, a judgment was rendered against the said Hannah Schaefer and the said Hannah Schaefer having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Julius Werling, Henry Draper and Martin B. Schaefer citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within sixty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Hannah Schaefer shall prosecute said writ to effect, and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

HANNAH SCHAEFER. [SEAL.]
JOHN J. YOUNG. [SEAL.]
WILLIAM H. DROVER. [SEAL.]

Sealed and delivered in presence of—
SAMUEL M. SAYLER.

Approved by—
LEANDER J. MONKS,
Chief Justice of the Supreme Court
of the State of Indiana.

154 And afterwards, to wit: on the 3rd day of August, 1901, the same being the 60th judicial day of the May term, 1901, of said supreme court, came again Hannah Schaefer, by her attorney, and filed in the office of the clerk of said supreme court the citation on said writ of error, duly signed by Hon. Leander J. Monks, chief justice of said court, and endorsement of service thereon by the United States marshal for the district of Indiana, said citation and endorsement of service thereon being hereunto next below attached, and being as follows:

Citation and Return.

155 UNITED STATES OF AMERICA, *ss:*

To Julius Werling, Henry Draper, and Martin B. Schaefer, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within sixty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Indiana wherein Hannah Schaefer is the plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Leander J. Monks, chief justice of the supreme court of the State of Indiana, this 2nd day of August, in the year of our Lord one thousand nine hundred and one.

[Seal Supreme Court, State of Indiana.]

LEANDER J. MONKS,
Chief Justice of the Supreme Court of the State of Indiana.

On this 6th day of August, in the year of our Lord one thousand nine hundred and one, personally appeared Alonzo Boyd before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Henry Draper and Martin B. Schaefer and by leaving a true copy at the last and usual place of residence of Julius Werling with his mother, Mary Ann Werling, at Huntington Ind. Aug. 5, 1901.

HENRY C. PETTIT,
U. S. Marshal,
By ALONZO BOYD, *Deputy.*

Sworn to and subscribed the 6th day of August, A. D. 1901.

[Seal District Court of the United States, District of Indiana.]

NOBLE C. BUTLER,
Clerk U. S. Dist. Court, Dist. of Ind.

3 services	6 00
Marshal's cost	7 50
	$13 50

Paid.

[Endorsed:] Marshal's civil docket No. 806.

156 And afterwards, to wit:—on the 3rd day of August, 1901, being the 60th judicial day of the May term, 1901, of said supreme court, came again Hannah Schaefer, by her attorney, and filed in the office of the clerk of said supreme court an assignment of errors in the Supreme Court of the United States, on the writ of error herein, said assignment of errors being hereto next below attached, and being as follows:

Assignment of Errors in Supreme Court of United States.

157 In the Supreme Court of the State of Indiana, May Term, 1901.

HANNAH SCHAEFER, Appellant,
vs.
JULIUS WERLING ET AL., Appellees.

Comes now the plaintiff and files the following assignment of errors upon which she will rely in her prosecution of the writ of error in the above-entitled cause.

1st. That said court erred in sustaining the demurrer interposed by the plaintiffs and defendants in error to the original answer filed in said cause and by holding and deciding that the facts stated in said answer filed were not sufficient to constitute a defense to the cause of action in the plaintiffs' complaint contained.

2nd. That said court erred in sustaining the demurrer interposed by the plaintiffs and defendants in error to the first paragraph of the original answer filed in said cause and by holding and deciding that the facts stated in said first paragraph of answer filed were not sufficient to constitute a defense to the cause of action in the plaintiffs' complaint contained

3rd. That said court erred in sustaining the demurrer interposed by the plaintiffs and defendants in error to the second paragraph of the original answer filed in said cause and by holding and deciding that the facts stated in said 2nd paragraph of answer filed were not sufficient to constitute a defense to the cause of action in the plaintiffs' complaint contained.

4th. That said court erred in sustaining the demurrer interposed by the plaintiffs and defendants in error to the 3rd paragraph 158 of the original answer filed in said cause and by holding and deciding that the facts stated in said 3rd paragraph of answer filed were not sufficient to constitute a defense to the cause of action in the plaintiffs' complaint contained.

5th. That the court erred in sustaining the demurrer interposed by the plaintiffs and defendants in error to the 6th paragraph of the original answer filed in said cause and by holding and deciding that the facts stated in said 6th paragraph of answer filed were not sufficient to constitute a defense to the cause of action in the plaintiffs' complaint contained.

6th. That the court erred in sustaining the demurrer interposed by the plaintiffs and defendants in error to the 7th paragraph of the answer filed in said cause and by holding and deciding that the facts stated in said 7th paragraph of answer filed were not sufficient to constitute a defense to the cause of action in the plaintiffs' complaint contained.

7th. That the court erred in sustaining the demurrer of the plaintiffs and defendants in error to the 8th paragraph of the original answer filed in said cause and by holding and deciding that the facts stated in said 8th paragraph of answer filed were not sufficient to constitute a defense to the cause of action in the plaintiffs' complaint contained.

8th. That said court erred in sustaining the demurrer interposed by the plaintiffs and defendants in error to the 9th paragraph of the original answer filed in said cause and by holding and deciding that the facts stated in said 9th paragraph of answer filed were not sufficient to constitute a defense to the cause of action in the plaintiffs' complaint contained.

159 9th. That said court erred in sustaining the demurrer interposed by the plaintiffs and defendants in error to the 10th paragraph of the original answer filed in said cause and by holding and deciding that the facts stated in said 10th paragraph of answer filed were not sufficient to constitute a defense to the cause of action in the plaintiffs' complaint contained.

10th. That said court erred in sustaining the demurrer interposed by the plaintiffs and defendants in error to the 11th paragraph of the original answer filed in said cause and by holding and deciding that the facts stated in said 11th paragraph of answer filed were not sufficient to constitute a defense to the cause of action in the plaintiffs' complaint contained.

11th. That said court erred in sustaining the demurrer interposed by the plaintiffs and defendants in error to the 12th paragraph of the original answer filed in said cause and by holding and deciding that the facts stated in said 12th paragraph of answer filed were not sufficient to constitute a defense to the cause of action in the plaintiffs' complaint contained.

12th. That said court erred in sustaining the demurrer interposed by the plaintiffs and defendants in error to the 13th paragraph of the original answer filed in said cause and by holding and deciding that the facts stated in said 13th paragraph of answer filed were not sufficient to constitute a defense to the cause of action in the plaintiffs' complaint contained.

13th. That said court erred in sustaining the demurrer interposed by the plaintiffs and defendants in error to the 14th paragraph of the original answer filed in said cause and by holding and deciding that the facts stated in said 14th paragraph of answer filed
160 were not sufficient to constitute a defense to the cause of
action in the plaintiffs' complaint contained.

14th. That said court erred in sustaining the demurrer interposed by the plaintiffs and defendants in error to the 15th paragraph of the original answer filed in said cause and by holding and deciding that the facts stated in said 15th paragraph of answer filed were not sufficient to constitute a defense to the cause of action in the plaintiffs' complaint contained.

15th. That said court erred in sustaining the demurrer interposed by the plaintiffs and defendants in error to the 16th paragraph of the original answer filed in said cause and by holding and deciding that the facts stated in said 16th paragraph of answer filed were not sufficient to constitute a defense to the cause of action in the plaintiffs' complaint contained.

16th. That said court erred in sustaining the demurrer interposed by the plaintiffs and defendants in error to the 17th paragraph of the original answer filed in said cause and by holding and deciding that the facts stated in said 17th paragraph of answer filed were not sufficient to constitute a defense to the cause of action in the plaintiffs' complaint contained.

17th. That said court erred in failing to specifically consider and pass on each assignment of error of the plaintiff in error.

18th. That said court erred in holding and deciding that the act of the General Assembly of the State of Indiana approved March 8th, 1889, Acts of 1889 page 237, commonly known as the Barrett law is constitutional, and not obnoxious to any provision of the Constitution of the United States.

161 19th. That the said court erred in holding and deciding that the act of the General Assembly of the State of Indiana approved March 8th, 1889, Acts of 1889 page 237, commonly known as the Barrett law is not in contravention to and not obnoxious to the provisions of the fourteenth amendment to the Constitution of the United States.

20th. That the said court erred in not holding and deciding that the act of the General Assembly of the State of Indiana approved March 8th, 1889, Acts of 1889 page 237, commonly known as the Barrett law is in contravention to and obnoxious to the provisions of the fourteenth amendment to the Constitution of the United States.

21st. That said court erred in overruling the petition of the plaintiff in error for a rehearing of her said cause.

22nd. That said court erred in rendering judgment against the plaintiff in error in said cause upon the pleadings in said cause and that said judgment is contrary to law and the facts as stated in the pleadings in said cause.

Wherefore the said plaintiff in error prays that the judgment of the said supreme court of the State of Indiana in said cause be reversed, and such directions be given that the full course and efficacy may inure to the plaintiff in error by reason of defenses set up in the original answer filed in said cause and in each separate paragraph of said answer therein contained.

W. W. DUDLEY,
L. T. MICHENER,
S. M. SAYLER,
Attorneys for the Plaintiff in Error,
the Defendant in the Original Cause.

162 *Certificate and Return of Clerk of Supreme Court of the State of Indiana.*

I, Robert A. Brown, clerk of the supreme court of the State of Indiana, certify the above and foregoing to be a true and complete transcript of the record and proceedings had, papers filed (excepting briefs), motions decided, rulings made, opinions delivered, judgments rendered, and all decrees and orders entered in the supreme court of Indiana in the above-entitled cause; also the original writ of error from the Supreme Court of the United States to the supreme court of Indiana, in this cause, and the original citation to the defendants in error, and proof of service thereof, and the original assignment of errors in the Supreme Court of the United States on said writ of error, and original cost bond.

Which said transcript annexed hereto and hereby returned, together with said original writ of error, original citation, original assignment of errors, and original cost bond, I hereby certify as and for my full return to said writ of error.

Seal Supreme Court, State of Indiana.

In witness whereof, I have hereunto set my hand, and affixed the seal of said supreme court, at the city of Indianapolis, this 7th day of August, A. D. 1901.

ROB'T A. BROWN,
Clerk of Supreme Court of Indiana.

Fee for this transcript $45.00 paid.

163 THE STATE OF INDIANA:

In the Supreme Court, November Term, 1899.

On the 27th day of April, being the 131st judicial day of said November term, 1899.

Hon. John. V. Hadley, chief justice; Hon. Francis E. Baker, Hon. Alexander Dowling, Hon. Leander J. Monks, Hon. James H. Jordan, justices.

In the case of—

THOMAS B. ADAMS
vs.
CITY OF SHELBYVILLE.
} 18998. Appeal from the Shelby Circuit Court.

Came the parties by their attorneys, and the court being sufficiently advised in the premises gave the following opinion and judgment pronounced by Hadley, C. J.

Dissenting opinion by Baker, J.

164 Appellant brought this suit to restrain appellee from improving a street on which he owned an abutting lot.

Shelbyville has less than 10,000 inhabitants and the proceedings for the proposed improvement were instituted under the statute

commonly known as "the Barrett law," §§ 4288–4298 Burns R. S. 1894 (6771–6780 R. S. 1881, *ib.* Horner 1897). On August 2, 1898, the common council without any petition from the owners of the property affected, passed a resolution declaring a necessity for the improvement, the same to be executed as follows: "There shall be set and erected a curb of oolitic stone four inches thick, twenty inches wide and not less than five feet in length, to be set twenty-two feet from the lot line outward, set to grade, set on a good bed of sand four inches thick and to be dressed so that when set and completed the part of curbing that is exposed will show as dressed; the joints all to fit neat and smooth and to make close connection; and the space between the brick sidewalk on said part of said street shall be filled with good rich dirt and properly graded and made smooth and when grade is made to be covered with good live fresh sod to be on grade with the curbing and the brick sidewalk * * * and that the cost and expense thereof, including advertising, labor and material for the same, be assessed against the property on the line and collected according to the provisions of an act of the General Assembly of the State of Indiana approved March 8, 1889, and amendments thereto," and that notice should be given by publication that the common council, on August 30, 1898, at their chamber, would receive sealed proposals for the execution of the work and would hear property-owners' objections to the necessity for the construction thereof. On August 26, 1898, appellant filed his complaint stating the foregoing facts and alleging that the street to be improved is one hundred feet wide, and the proposed widening of the sidewalks to twenty-two feet on each side will reduce the roadway to about fifty-five feet; that the making of said improvement will cost about one dollar per lineal foot, which it is proposed the abutting property-owners shall pay; that it will inconvenience the plaintiff and other property-owners and make their property less valuable because of the inconvenience in getting to and from the traveled roadway; that it will be of no benefit to the plaintiff and damage him $100. The sustaining of a demurrer to the
165 complaint for want of facts is the only error assigned.

Counsel, in the introduction of their respective briefs, epigrammatically state the principal issue in this court thus: "Is the 'Barrett law' law?" "The 'Barrett law' is law." "The 'Barrett law' is not law."

We will not stop now to inquire whether the demurrer to the complaint should have been overruled for a minor cause, since the appellant, as indicated by his argument, has based his appeal principally upon the question of the statute's constitutionality; and for the present the complaint will be taken as admitting that the city intends to proceed in accordance with the provisions of the statute. Appellant's contention is that the statute, in violation of the Federal and State constitutions, provides for the taking of property without just compensation, and without due process of law. Two propositions are involved: (1) Is the method of assessing the whole cost of a street improvement upon the abutting property equally by the frontage, irrespective of accruing benefits and damages, constitutional? (2) Is that the method required by the "Barrett law"?

Many of the courts of this country have answered the first question in the affirmative. Cooley on Taxation, (2 ed. 1886) p. 644, says: "In many instances where streets were to be opened or improved, sewers constructed, water pipes laid, or other improvements entered upon, the benefits of which might be expected to diffuse themselves along the line of the improvement in a degree bearing some proportion to the frontage, the legislature has deemed it right and proper to take the line of frontage as the most practicable and reasonable measure of probable benefits; and making that the standard, to apportion the benefits accordingly. Such a measure of apportionment seems at first blush to be perfectly arbitrary, and likely to operate in some cases with great injustice; but it cannot be denied that in the case of some improvements, frontage is a very reasonable measure of benefits; much more just than value could be; and perhaps approaching equality as nearly as any estimate of benefits made by the judgment of men. However this may be, the authorities are well united in the conclusion that frontage may lawfully be made the basis of apportionment."

In his treatise on municipal corporations, published in 1890,
Dillon gives an extended review on the subject and notes
166 that the courts are very generally agreed, that the authority
to require property specially benefited to bear the expense of local improvements is embraced within the taxing power and that a statute authorizing municipal authorities to make such improvements and assess the cost in proportion to the frontage, in the absence of some special constitutional restriction, is a valid exercise of the power of taxation, and according to the weight of authority is considered to be a question of legislative expediency. 4th ed. §§ 752–761. And, as upholding the doctrine of the majority, the author notes (§ 760) that the Supreme Court of the United States holds that State laws imposing upon property, according to legislative discretion, the cost of local improvements, do not deprive the owner of his property without due process of law within the meaning of the fourteenth amendment. Davidson *v.* New Orleans, 96 U. S. 97, 104 (1877); County of Mobile *v.* Kimbal, 102 U. S. 691 (1880); Hagar *v.* Reclamation District, 111 U. S. 701 (1883); Wurtz *v.* Hoagland, 114 U. S. 606 (1884); Walston *v.* Nevin, 128 U. S. 578 (1888). To which may be added: Spencer *v.* Merchant, 125 U. S. 345 (1888); Williams *v.* Eggleston, 170 U. S. 304, 311 (1897); Parsons *v.* District of Columbia, 170 U. S. 45 (1897).

The author, however, after considering many cases pro and con and summing up the general principles underlying special assessment in his eighth conclusion (§ 761), affirms what he conceives to be the only true rule upon principle as follows: "Whether it is competent for the legislature to declare that no part of the expense of a local improvement of a public nature shall be borne by a general tax, and that the whole of it shall be assessed upon the abutting property and other property in the vicinity of the improvement, thus for itself conclusively determining, not only that such property

is specially benefited, but that it is thus benefited to the extent of the cost of the improvement, and then to provide for the apportionment of the amount by an estimate to be made by designated boards of officers, or by frontage or superficial area, is a question upon which the courts are not agreed. Almost all of the earlier cases asserted that the legislative discretion in the apportionment of public burdens extended this far, and such legislation is still upheld in most of the States. But since the period when express provisions have been made in many of the State constitutions, requiring uniformity and equality of taxation, several courts of great
167 respectability, either by force of this requirement or in the
spirit of it, and perceiving that special benefits actually received by each parcel of contributing property, was the only principle upon which such assessments can justly rest, and that any other rule is unequal, oppressive and arbitrary, have denied the ultimate scope of legislative discretion and power, and asserted what must upon principle be regarded as the just and reasonable doctrine, that the cost of a local improvement can be assessed upon particular property only to the extent that it is specially and peculiarly benefited; and since the excess beyond that is a benefit to the municipality at large, it must be borne by the general treasury."

Among the many cases cited by the author in support of his conclusion is Tide Water Co. *v.* Coster, 18 N. J. Eq. 518, where it is said on page 527: "Where lands are improved by legislative action, on the ground of public utility, the cost of such improvement, it has been frequently held, may, to a certain degree, be imposed on the parties who, in consequence of owning lands in the vicinity of such improvement, receive a peculiar advantage. By the operation of such a system, it is not considered that the property of the individual, or any part of it, is taken from him for the public use, because he is compensated in the enhanced value of such property. But it is clear this principle is only applicable when the benefit is commensurate to the burthen; when that which is received by the landowner is equal or superior in value to the sum exacted; for if the sum exacted be in excess, then to that extent most incontestably, private property is assumed by the public. Nor, as to this excess, can it be successfully maintained that such imposition is legitimate as an exercise of the power of taxation. Such an imposition has none of the essential characteristics of a tax. We are to bear in mind that this projected improvement is to be regarded as one in which the public has an interest; the owners of these waste lands have a special concern in such improvement, so far as their lands will be in a peculiar manner benefited; beyond this, their situation is the same as that of the rest of the community. The consideration for the excess of the cost of the improvement over the enhancement of the property, within the operation of this act, is the public benefit, how then, upon any principle of taxation, can this
168 portion of the expense be thrown exclusively upon certain
individuals? The expenditure of this portion of the cost of the work can only be justified on the ground of benefit to the public. I am aware of no principle which will permit the expenses incurred

in conferring such benefit upon the public, to be laid in the form of a tax upon certain persons, who are designated, not indeed by name, but by their description as the owners of certain lands."

In the recent case of Norwood *v.* Baker, 172 U. S., 269, filed December 12, 1898, the Supreme Court of the United States seems to have abandoned its former rulings and to have adopted what Dillon announces as the only true rule upon principle. In that case the court said: "The particular question presented for consideration involves the validity of an ordinance of that village (Norwood), assessing upon appellees' land abutting on each side of the new street an amount covering not simply a sum equal to that paid for the land taken for the street, but in addition the cost and expenses connected with the condemnation proceedings;" and "the present appeal is prosecuted directly to this court because the case involves the construction and application of the Constitution of the United States."

Under a statute of Ohio the council was authorized to assess the cost and expenses of street improvement "by front foot of the property bounding and abutting upon the improvement. Under this statute the village passed an ordinance providing that all costs and expenses of the condemnation and opening proceedings should be assessed 'per front foot upon the property bounding and abutting on that part of Ivenhol avenue as condemned and appropriated herein.'"

The real question presented by the facts is thus stated by the court: "Does the exclusion of benefits from the estimate of compensation to be made for the property actually taken for public use authorize the public to charge upon the abutting property the sum paid for it, together with the entire costs incurred in the condemnation proceedings, irrespective of the question whether the property was benefited by the opening of the street?"

In answering the question the court say: "The power of the legislature in these matters is not unlimited. There is a point beyond which the legislative department, even when exerting the power of taxation, may not go consistently with the citizen's right of property. As already indicated, the principle underlying special
169 assessments to meet the cost of public improvements is that
the property upon which they are imposed is peculiarly benefited, and therefore the owners do not, in fact, pay anything in excess of what they receive by reason of such improvement. But the guaranties for the protection of private property would be seriously impaired, if it were established as a rule of constitutional law, that the imposition by the legislature upon particular private property of the entire cost of a public improvement, irrespective of any peculiar benefit accruing to the owner from such improvement, could not be questioned by him in the courts of the country. It is one thing for the legislature to prescribe it as a *general* rule that property abutting on a street opened by the public shall be deemed to have been specially benefited by such improvement, and therefore should specially contribute to the cost incurred by the public. It is quite a different thing to lay it down as an absolute rule that such

property, whether it is in fact benefited or not by the opening of the street, may be assessed by the front foot for a fixed sum representing the whole cost of the improvement, and without any right in the property-owner to show, when an assessment of that kind is made or is about to be made, that the sum so fixed is in excess of the benefits received. In our judgment, the exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is, *to the extent of such excess*, a taking, under the guise of taxation, of private property for public use without compensation."

After reviewing many authorities and italicizing what Dillon affirms as the true rule, the court concludes: "It thus appears that the statute authorizes a special assessment upon the bounding and abutting property by the front foot for the entire cost and expense of the improvement, without taking special benefits into account. And that was the method pursued by the village of Norwood. The corporation manifestly proceeded upon the theory that the abutting property could be made to bear the whole cost of the improvement, whether such property was benefited or not to the extent of such cost."

And further: "As the pleadings show, the village proceeded upon the theory, justified by the words of the statute, that the entire cost incurred in opening the street, including the value of the
170 property appropriated, could, when the assessment was by the front foot, be put upon the abutting property, irrespective of special benefits. The assessment was by the front foot and for a specific sum representing such cost, and that sum could not have been reduced under the ordinance of the village even if proof had been made that the costs and expenses assessed upon the abutting property exceeded the special benefits. The assessment was in itself an illegal one because it rested upon a basis that excluded any consideration of benefits. A decree enjoining the whole assessment was therefore the only appropriate one."

Again: "The present case is one of illegal assessment under a *rule or system* which, as we have stated, violated the Constitution, in that the entire cost of the street improvement was imposed upon the abutting property, by the front foot, without any reference to special benefits."

An assessment for such improvement, to be in conformity with the opinion, is thus stated: "That while abutting property may be specially assessed on account of the expense attending the opening of a public street in front of it, such assessment must be measured or limited by the special benefits accruing to it, that is, by benefits that are not shared by the general public; and that taxation of the abutting property for any substantial excess of such expense over special benefits will, to the extent of such excess, be a taking of private property for public use without compensation."

The final judgment of the court follows: "The judgment of the circuit court must be affirmed, upon the ground that the assessment against the plaintiff's abutting property was under a rule which excluded any inquiry as to special benefits, and the necessary operation of which was, to the extent of the excess of the cost of opening the street in question over any special benefits accruing to the abutting property therefrom, to take private property for public use without compensation."

While the facts in the Norwood-Baker case are unusual and distinguishable from the facts in the case at bar, yet it cannot be successfully denied that the general doctrine laid down is to the effect that the imposition of assessments for local improvements per front foot, irrespective of the question of accruing benefits, is in violation of the fourteenth amendment to the Federal Constitution; and
that the case has been so construed generally by the courts of
171 the country, see: Loeb *v.* Trustees of Columbia Tp. (C. C.
S. D. Ohio) 91 Fed. 37, January 9, 1899, involving the validity of assessments laid by a township upon abutting property for the improvement of a road; Fay *v.* City of Springfield (C. C. S. D. Mo.) 94 Fed. 409, May 9, 1899, street-paving assessments against abutters; Sears *v.* Street Commissioners of Boston, 173 Mass. 350, May 18, 1899, sewer assessments upon a particular class of property; Hutcheson *v.* Storrie, 92 Texas, 685, June 19, 1899, street-paving assessments upon abutting property; Schroeder *v.* Overman (sup. ct. Ohio) 55 N. E. 158, October 24, 1899, street pav-ment and sewer assessments against abutters; Charles *v.* City of Marion (C. C. dist. Ind.) 98 Fed. 166, December 11, 1899, street-paving assessments against abutters.

The judgment of the Federal Supreme Court defining the limits of legislative power, sanctioned by the Federal Constitution, is the supreme law of the land. It commands State courts as well as State legislatures. The duty thus imposed is agreeable as being in accord with our sense of just principles, and as furnishing the only reasonable foundation for the exercise of the taxing power in respect to special assessments.

Streets are public highways which all inhabitants of the municipality have an equal right to use and by the improvement of which all are in a measure benefited. There is much justice in holding that a sum equal to the special benefits, that is, such benefits as are not shared by the citizens generally, conferred upon the abutters may be exacted for application to the costs of the improvement; for when the corporation takes only so much as it returns in the way of enhanced values and increased personal comfort, the property-owner is not injured; but when he has thus contributed his special benefits as to the remainder of the costs he stands as any other citizen. This remainder represents the price to the public for its general benefits, and when exacted from the abutters is but the taxation of a class for public benefit, and clearly a taking of property for public use without just compensation.

We conclude, therefore, that the principles applicable to assessments for local improvements are these: *The legislature may create, or authorize a municipality to create, a local taxing district for local-improvement purposes, which includes part only of the property within*

the municipality; the legislature may declare conclusively that
172 *only the property within the taxing district shall be specially*
assessed on account of local improvement within that district;
each parcel of contributing property may be assessed only to the extent that it actually receives special benefits; the taxing district as a whole may be assessed only to the extent of the sum of the special benefits actually received by the several parcels of contributing property; the improvement, so far as its cost exceeds the special benefits resulting to the several parcels of property in the taxing district, is a benefit to the municipality at large, and such excess must be borne by the general treasury; property-owners affected by an improvement, within a taxing district, are entitled to a hearing on the question of special benefits.

It remains to be seen if the Barrett law denies any of these principles.

Whether the answer shall be for the appellant or the appellee depends upon two considerations, namely: (1) Does the Barrett law require that the costs of street and alley improvements shall be assessed against abutting property by the front-foot rule, without regard to the question of resulting benefits? (2) Do the provisions of the Barrett law supply to affected property-owners due process of law within the meaning of the State and Federal constitutions?

In arriving at the true interpretation of the statute it is useful for us to review the legislative and judicial history of the State and country prior to the enactment of the Barrett law in 1889.

Dillon and Cooley class Indiana as one of the majority States upholding the doctrine that it is competent for the legislature to conclusively declare that the total cost of a local improvement shall be assessed equally against the frontage; and such classification was not without warrant. In 1852, the right to confer authority upon municipal officers to so provide for street and other improvements, was first asserted by the legislature in a general law. (R. S. 1852, p. 217.) It was asserted in 1857 (Acts of 1857, p. 53), and again in 1865 (Acts of 1865, spec. sess., p. 29), and again in 1867 (Acts of 1867, p. 66), and again approved in 1881 (R. S. 1881, § 3163). The right to enforce such assessments was recognized by this court in 1861, Indianapolis *v.* Emberry, 17 Ind. 175, and in many subsequent
decisions. The constitutionality of such legislation was never
173 called in question until 1868, when it was assailed on the
ground only that the same was in violation of the State constitution requiring the rate of assessment and taxation to be uniform and equal. Such legislation was then and subsequently upheld as against such objection. Art. 10, § 12 State constitution; Goodrich *v.* Turnpike Co., 26 Ind. 119; Bright *v.* McCullough, 27 Ind. 223; Palmer *v.* Stuph, 29 Ind. 229; Law *v.* Madison etc. Co. 30 Ind. 77.

But the constitutional question, of due process of law and the taking of property for public use without compensation in the making of local improvements within the meaning of the fourteenth amendment to the Federal Constitution, seems never to have been previously considered by this court so far as we have observed. Hence no ground exists to justify the insistence that the determination by this court, under former street-improvement laws, of the constitutional question now involved, has been carried into the enactment of the statute in controversy.

It should be noted that prior to 1889 no provision was found in any of the laws entitling property-owners to a voice upon the necessity for the improvement, or to a hearing of any kind upon the acts of the assessing officers, or to be heard upon any subject touching the improvement, until after the issuance of a precept for the sale of their property for the payment of the assessment, and then only as to the regularity of the proceedings subsequent to the making of the contract for the improvement. As the law had stood for thirty-seven years, when the Barrett law came up for consideration in the assembly of 1889, municipal officers had the power, with a two-thirds vote of the council, to order an improvement, however costly and however unnecessary and oppressive, without regard to the wishes of the citizens, and proceed to charge the abutters with the total cost by the frontage rule, irrespective of any consideration of benefits, and thus, in some instances, impose upon the citizen an absolute confiscation of property without any form of hearing in its defense, further than to require it to be done orderly and according to prescribed rule. For some reasons the people had become dissatisfied with the law as it existed upon the subject. In what respects may be best judged from the character of the changes that were made. It is evident that the discontent did not arise from the method of frontage assessments, as a rule, for that principle had been consistently maintained in every enactment since 1852 and was carried into the Barrett law. Be-
174 sides, in most cases the rule is as just and equitable as any that may be devised. In the light of thirty-seven years' experience, however, it was doubtless manifest to the law-makers that in some instances municipal officers, by reckless and inconsiderate acts, without testing public opinion, had involved citizens in heavy and unnecessary burdens by improvements; and that it was to them equally clear that all property bordering upon a municipal highway was not affected in the same way by an improvement of the latter; that in some cases the grade may be so raised or lowered as to most seriously impair the use and value of the property; in others, that some property may be sitaute upon a general level, highly improved and in a business part of the city, while others upon the same street may be remote from business, lying low and near a water-course, and practically worthless for business or residentail purposes; in others, some abutting lots may be twenty feet, and others 200 feet, deep. It seems, therefore, reasonable to presume that the mischiefs resulting from the acts of reckless officials and the common but exceptional cases of injustice and hardship flowing from the uniform and rigid application of the front-foot rule, were brought to the attention of the legislature, and that their avoidance was a purpose entering into the structure of the new law. Quill *v.* Indianapolis, 124 Ind. 292, 295. This much is certain, that for reasons deemed sufficient new and important provisions were incorporated into the new law—provisions contained in no previous law upon the subject.

The first of these is § 2 Acts 1889, p. 237 (4289 Burns R. S. 1894) and is as follows: "Whenever cities or incorporated towns subject to the provisions of this act shall deem it necessary to construct any sewer, or make any of the alley or street improvements in this act mentioned, the council or board of trustees shall declare by resolution the necessity therefor, and shall state the kind, size, location and designate the terminal points thereof, and notice for ten days of the passage of such resolution shall be given for two weeks in some newspaper of general circulation published in such city or incorporated town, if any there be, and if there be not such paper,
then in some such paper printed and published in the county
175 in which such city or incorporated town is located. Said
notices shall state the time and place, when and where the property-owners along the line of said proposed improvement can make objections to the necessity for the construction thereof."

It is argued that this section affords the property-owner no remedy beyond the right to advise the council with respect to the necessity for the improvement; and so it has been held by this court. Quill *v.* Indianapolis, 124 Ind. 292. But it does not follow that no benefit is to flow to the property-owner from the observance of this provision. Municipal officers are elective and, as a rule, in dealing with corporation affairs, will give respectful heed to the popular judgment of their constituents. This provision removes all power from the common council to impose burdens upon private property unawares the owner. It requires public notice to be given of the character and location of the proposed improvement for twenty-four days from the first publication, a length of time sufficient to develop public opinion advisedly, and at a fixed time and place and before making a contract, the council shall hear those along the line upon the subject of the improvement; and it may reasonably be expected that if the property-owners shall be able to show that there exists no necessity for such improvement, or that it will cost more than the accruing benefits, well-meaning officers will be controlled by such showing and advice, as readily as by the positive mandate of a statute. It was not intended by this section to deprive the common council of the power of ordering the improvement irrespective of the advice of the property-owners, but its purpose is to provide, in all cases, that they shall act advisedly and with deliberation.

The second and most important new provision is found in sections 6 and 7, Acts 1889 (the latter section as amended, Acts 1891, p. 324, Acts 1899, p. 63) sections 4293 and 4294 Burns R. S. 1894, which follow:

"When any such improvement has been made and completed according to the terms of the contract therefor made, the common council of such city, or the board of trustees of such town, shall cause a final estimate of the total cost thereof to be made by the
city or town engineer, and the common council of such city,
176 or the board of trustees of such town shall require said city
or town engineer to report to the common council of such city or the board of trustees of such town the following facts touch-

ing such improvement: First. The total cost of said improvement. Second. The average cost per running front foot of the whole length of that part of the street or alley so improved. Third. The name of each property-owner on that part of the street or alley so improved. Fourth. The number of front feet owned by the respective property-owners on that part of said street so improved. Fifth. The amount of such cost for improvement due upon each lot or parcel of ground bordering on said street or alley, which amount shall be ascertained and fixed by multiplying the average cost price per running front foot by the number of running front feet of the several lots or parcels of ground respectively. Sixth. The full description, together with the owner's name, of each lot or parcel of ground bordering on said street so improved. Seventh. In the case of the construction of a sewer, a description of each lot or parcel of lot benefited thereby, together with the owner's name and the fair proportion of the cost of such sewer according to the benefits conferred thereby, that should be assessed against such lot or part of a lot.

Upon the filing of the report provided for in the last preceding section, the common council of such city, or the board of trustees of such town, shall give two weeks' notice in a newspaper printed and published in such city or incorporated town, if any there be, and if there be no such paper, then in a newspaper printed and published in the county in which such city or incorporated town is located, of the time and place, when and where, a hearing can be had upon such report, before a committee to be appointed to consider such reports, and such committee shall make report to the common council of such city, or the board of trustees of such town, recommending the adoption or alteration of such report, and the common council of such city or the board of trustees of such town may adopt, alter or amend such report and the assessments therein. Any person feeling aggrieved by such report shall have the right to appear before such committees and the common council of such city or the board of trustees of such town, and make objection thereto, and shall be accorded a hearing thereon, and the common council of such city, or the board of trustees of such town, shall assess against the several lots or parcels of ground the several amounts 177 which shall be assessed for and on account of such improvement."

It will be noted that section 6 provides that after completion of the work, the engineer shall report certain facts to the council—not make an assessment of the costs; that when such report is lodged with the council, it shall give two weeks' public notice of a time and place, when and where a *hearing* can be had upon the facts reported by the engineer, before a committee, appointed by the council to *consider* such report, and such committee shall after a consideration of the report recommend to the council the adoption or alteration of the same. And any person feeling aggrieved by such report shall have the right to appear before the committee and *present objections* thereto *and shall be accorded a hearing thereon* and the further right to carry his objections to the common council where he shall also be accorded a hearing. After the hearings and objections are disposed of, the common council may adopt, alter or amend the report and the assessments thereon, "and shall assess against the several lots or parcels of ground the several amounts which shall be assessed for and on account of such improvement."

It is contended that the statute limits the hearing before the committee and common council to errors of the engineer in stating the facts required of him and that the power of the council, with respect to the report is exhausted when it has verified such facts. We are unable to approve such construction. Section 6 requires that the engineer shall report certain facts to the council; that is to say, report such facts *correctly;* nothing short of a correct report is a compliance with the statute. We must view the subject as if the lawmakers assumed that the engineer would do his duty and that, when he submitted his report to the council, it accurately stated the facts required of him. Besides, will it be seriously contended that if, by inadvertence, errors crept into the report, the engineer, or even the council, at any time before final action thereon, did not have full power to correct it? Ball *v.* Balfe, 41 Ind. 221, 225. What reason, then, could there be for the legislature to deem it expedient to provide express authority in the council to correct or cause to be corrected errors in a report where none were reasonably supposed to exist and where the power of correction would exist by irresistible implication? We may not attribute insincerity and dissembling to the legislators. We must believe that they meant
something by these provisions beyond that granted by the
178 old law, or why change it? The old law had been found
efficient and authorized by the Constitution.

In the search for legislative intent "the court will look to each and every part of the statute; to the circumstances under which it was enacted; to the old law upon the subject, if any; to other statutes upon the subject, or relative subjects, whether in force or repealed; to contemporaneous legislative history and to the evils and mischiefs to be remedied." Barber etc. Co. *v.* Edgerton, 125 Ind. 455, 460; Reynolds *v.* Bowen, 138 Ind. 434, 449; Goodwin *v.* State, 142 Ind. 117, 121.

The common council shall give two weeks' notice of a time and place when their committee shall consider the report and hear grievances. In drainage and other assessment proceedings, it is provided that the commissioners shall inquire into certain facts, assess benefits and damages and "make report to the court; and the court shall fix a time for *hearing the report,*" and after ten days' notice of the filing thereof those affected by the report may appear and remonstrate. Sections 5624 and 5625 Burns R. S. 1894.

It is even doubtful that the consideration of the report required of the committee, and the hearing they shall give thereon, relate to any other subject than the *proposed* assessments, or allotments of the cost of the improvement. After such hearing and consideration the committee is required to report their recommendations to the common council, and the council, being thus advised and upon further hearing of objections, may adopt the report as made by the engineer, distributing the total cost equally per front foot, or it may alter the report and the assessments therein; and when the conclusion of the council is reached, it shall assess against the several lots and parcels of ground the several amounts which shall be assessed on account of such improvement. The mandate of the statute, following the hearings, that the council shall assess the several amounts against the several parcels, clearly indicates the particular subject to be previously considered by the conucil and its committee. From the term "hearing" is necessarily implied the power to administer some adequate remedy.

The council may alter the assessments, that is, as indicated by the engineer's report on the front-foot rule. "Alter" is to "make otherwise." Webster's Int. Dict.

From these considerations we are unable to resist the conclusion that upon the hearing provided in section 7, the common 179 council have power to change assessments from the frontage rule in such cases as they may deem just. That the legislature may confer upon municipal officers the power to adjust special benefits accruing from such improvements to a fair and just basis, is well settled; Garvin *v.* Dausman, 114 Ind. 429, 435; Kizer *v.* Winchester, 141 Ind. 694, 696; and the speedy and ample remedy afforded by this view of the statute is consistent with the spirit of the act and the nature of such improvement, which public convenience requires to be accomplished in the shortest practical period, as said in the Dausman case, *supra*, page 436; "It is essential to the public good that the necessity for street and other public improvements, and the cost of making them, and such other proceedings as are necessary to secure the prompt execution of the work, be determined and taken in a comparatively summary way."

An assessment is the "adjusting of the shares of a contribution by several towards a common beneficial object according to the benefit received." Bouvier's Law Dict.; Anderson's Law Dict.

From the power to alter is necessarily implied the power to add to or diminish. The absence of an express rule for guidance in the exercise of the power to alter does not impair it. It is sufficient if the power to change the assessment from the frontage rule exists. "It is a well-affirmed principle that when a power is conferred by a statute, everything necessary to carry out the purpose of the power conferred, and make it effectual and complete, will be implied." Conn *v.* Board of Commissioners etc. 151 Ind. 517, 525; Sutherland's Stat. Con. §§ 340 and 341. Such implied power, however, will not authorize the employment of means and methods which may spring from the whims and caprices of administrative officers, according to varying circumstances, but will only permit the use of such reasonable, uniform and consistent modes and measures as are calculated to accomplish the purpose in the spirit designed. How the power may be exercised in this instance must be determined from the spirit and scope of the whole act, of which said section 7 is a part, as aided by the spirit and principle running through other legislation upon the same and kindred subjects. Sutherland's Stat. Con. § 288.

In an act relating to the opening and improvement of streets,

§ 3633 Burns R. S. 1894 (3170 R. S. 1881, *ib.* Horner), commissioners are commanded to make assessments on the basis of actual benefits.

The same rule is required in drainage and free gravel road
180 proceedings, § 5658 Burns R. S. 1894 (4288 R. S. 1881, *ib.*
Horner, Acts 1869, p. 74). And this court has consistently held for thirty years that special benefits is the only foundation for special assessments. City of New Albany *v.* Cook, 29 Ind. 220; Ross *v.* Stackhouse, 114 Ind. 200; Quill *v.* Indianapolis 124 Ind. 292; The Barber etc. Co. *v.* Edgerton, 125 Ind. 455, 465.

The published notice calls attention of all persons affected that the report of the engineer is before the council for consideration and that the same is subject to such alteration as the council may deem just in adjusting the several assessments to the basis of actual benefits, and all persons concerned are bound to know that the *prima facie* assessments against their property are liable to be increased as well as decreased.

That this court prior to 1889 supported the doctrine that the legislature had constitutional sanction to declare as matter of law that the special benefits to a particular district, by an improvement were equally received by bordering property and equal to the total cost, has little force as an argument. The answer to it is that the injustice and hardship, resulting from the doctrine, was potential in securing legislative action for the amelioration of the rule. We think it evident that the assembly of 1889 determined upon a modification of the old rule, so far as it required an equal distribution of the cost of an improvement, on all bordering property without regard to the question of actual benefits. Not that the rule offended either the federal or State Constitution as then interpreted by the Federal and State courts, (for no question of that character had been raised in this State) but because it was required by the simplest principles of justice. The act of 1899 must be tested by the usual canons of construction, and if from these it appears that the assembly took cognizance of the mischiefs resulting from the old law, and provided a remedy in advance of constitutional requirement, the legislation is not to be discredited by the fact that the courts have come to restrict the constitutional limitations to the bounds set by the statute. The important inquiry is, is the statute, as enacted in 1889 and as it now stands, antagonistic to any of the principles of the Federal Constitution as now construed by the U. S. Supreme Court?

Section 3 provides: "In all contracts specified in the preceding section, the cost of any street or alley improvement shall be estimated (not assessed) according to the whole length of the
181 street or alley or part thereof to be improved, per running
foot * * * and the city or incorporated town shall be liable to the contractor for the contract price of said improvement, and the owners of lots or parts of lots bordering on such street or alley or part thereof to be improved, * * * shall be liable to the city for their proportion of the costs in the ratio of the front line of the lots owned by them, to the whole improved line for street and alley improvements * * * and the city or incorporated town

shall have a lien upon such lots or parts of lots respectively from the time such improvement is ordered for such costs of improvement, collectible as hereinafter provided. * * * Such city or town shall be liable and pay for all that part of such street or alley improvement as shall be occupied by the street or alley crossings and may order that any part of the total cost of any of the improvements in this act mentioned shall be paid out of the general fund."

The gist of these provisions is that in providing for the payment for an improvement, the expense of it shall be estimated, that is, calculated by the running foot; the city or town shall be liable to the contractor for the full contract price, and to reimburse it the owners of lots shall be liable to the city or town for their legal proportion of the cost in the ratio of their several frontage to the whole frontage of the improvement; which liability shall constitute a lien upon abutting property in favor of the city or town from the time such improvement is ordered.

Three things may be noted in these provisions: (1) that the cost shall be estimated by the running foot, not so assessed; (2) that the liability shall relate to the frontage; and (3) that the liability and lien shall arise and attach at the time the improvement is ordered. There is nowhere to be found a mandate that the costs shall be *assessed* by the frontage rule or that property shall ultimately be required to contribute equally per front foot. The measure of liability and lien here mentioned are only conjectured at most, since they arise before an ascertainment of the facts, by measurement, necessary to their definite determination. The provision can only mean that the liability and lien when definitely ascertained by the report of the engineer, as required by section 6, as reviewed and adjudged by the common council, as required by section 7, shall relate back to the time of ordering the improvement.

If we read section 3 as providing a fixed rule of assessments,
182 as contended, the effect is to render section 7 meaningless and
nugatory; for it clearly follows that if the rule of assessments is unalterably fixed by sectian 3, the hearing provided for in section 7 is nothing more than a cunningly devised illusion which expressly provides that the aggrieved property-owners shall have the right to present their grievance to a tribunal that has no power to grant relief. This is mockery pure and simple and implies insincerity and dissimulation in the law-makers, which we cannot indulge.

On the other hand, if we read section 3 as providing a basis for assessments which shall be *prima facie* correct, and which shall be held to be the true and correct assessments until assailed by the property-owner and shown upon a hearing, by a preponderance of proof, to be incorrect, or found to be injust and altered and amended by the common council of its own motion, than we find sections 3, 6, and 7 in complete harmony, each effective, and in accord with the other provisions of the act. The intention is to be ascertained by considering the entire statute; and we must proceed as we would with any other composition, construing it with reference to the leading idea and purpose of the whole instrument. The general intent is the Polar star by which the meaning of any part is to be determined with a view to harmonizing the entire act. Sutherland's Stat. Con. § 239.

We therefore conclude that section 3, Acts 1889 (4290 Burns R. S. 1894) must be construed as providing a rule of *prima facie* assessments in street and alley improvements, which allotments by the city or town engineer, under section 6 of said act of 1889 (4293 Burns R. S. 1894) are subject to review and alteration by the common council and board of trustees, under section 7 of said act of 1889, as amended (Acts of 1891, p. 324; 1899, p. 64; § 4294 Burns R. S. 1894) upon the basis of actual special benefits received by the improvement; and that under said section 7, the common council of a city or board of trustees of an incorporated town have not only the power but it is their imperative duty to adjust the assessments for street and alley improvements, under said act, to conform to the actual special benefits accruing to each of the abutting property-owners.

The further question is propounded: If, in adjusting assessments
to actual special benefits received, it shall be found that the
183 total cost of the improvement exceeds the total sum of special
benefits accruing therefrom, what provision is made for the
excess of cost? It is quite clear that the common council or board of trustees have no power to impair the obligation of contracts, and that some provision must be made for full payment of the contract price for the improvement.

Section 5 of said act (4292 Burns R. S. 1894,) reads as follows: "* * * The common council of such city or the board of trustees of such town, with the concurrence of two-thirds of the members thereof, may order or cause any or all of the improvements mentioned in the first section of this act, and repairs of any kind of streets and alleys to be made in like manner, without such petition, and either charge and cause any or all of the expenses thereof to be assessed, as hereinafter provided, when petition is made, or if it is deemed just and right by the common council of such city or the board of trustees of such town to cause such expenses, or any part thereof, to be paid out of the general revenue of the city or incorporated town."

Here is a new power granted the common council and board of trustees, to order, by a two-thirds vote, any improvement as fully as they could do upon a petition, as provided by section 1; and when the body chooses to exercise this power, it may elect between three schemes in providing payment for street and alley improvements. It may either charge the whole expense against the general revenues of the city or town, or it may charge a part against the general revenues and a part against the abutting property, or it may charge all the expenses of such improvement against the abutting property upon the presumption, which it may for the time indulge, that the aggregate special benefits accruing therefrom will be equal to the total expenses; but it must take notice, when it decides to charge the abutting property, that the expenses shall be assessed "as hereinafter provided" in sections 6 and 7, which, as we have seen, must be done upon the basis of actual special benefits received.

Section 3 provides that "the city or incorporated town shall be

liable to the contractor for the contract price of said improvement" and when a city or town enters into a contract, under the scheme of requiring the abutters to contribute to the cost to the extent of their special benefits, the corporation is bound to know that if it
184 shall be found, upon the hearing provided in section 7, that
the accruing special benefits are inadequate to pay the expenses of the improvement, the deficit must be provided for from the general revenues of the city or town. The question of deficit cannot be determined until the common council has concluded its hearings and made the assessments. At this stage, the improvement has been completed and the contractor entitled to his pay. It is then too late to halt or retreat. No course is then open to the corporation but to go forward and put into exercise the power conferred by section 3 and order the deficit paid from the general treasury.

The contingency of a deficit arises from the law and enters into and becomes a part of the order for the improvement and a part of the contract therefor, and is but a reasonable exercise of the continuing power to pay any part of the expenses from the general revenues when the fact arises that they cannot fully be met by the special benefits. The entering into a contract under the scheme of requiring contribution from special benefits to the extent thereof, is an election between methods of payment and, when once chosen and entered upon, the procedure thereunder, as fixed by the law, is as imperatively commanded as if no other existed. The insistence, therefore, that the law contains no mandate that the common council or board of trustees shall, in any event, pay any part of the expenses of such improvements, from the general revenues, cannot be sustained.

We are aware that this court has held that when the assessment scheme is pursued in making such improvements, the city or town assumes no primary liability, except for street and alley crossings, and what we here hold is that, as to a deficit only, if any, in special benefits to meet the cost of an improvement, the city or town sustains the same primary obligation imposed upon it for street and alley crossings.

There is language used in Terre Haute *v.* Mack, 139 Ind. 99, and perhaps in other cases in this and the appellate court not necessary to the decision of any question presented by the record, that appears in conflict with what is here decided, but, in so far as such language may so appear, it is disapproved. The canons of construction compel the interpretation which we have given this act, and so
185 construed it is not obnoxious to any provision of the State or
Federal Constitution, either under the Norwood-Baker case or the earlier decisions of the Supreme Court of the United States or of this State.

It is proposed by the improvement which affects the appellant to reduce the roadway of the street from seventy to fifty-six feet in width by an extension outward of the sidewalks from fifteen to twenty-two feet. The sidewalks have heretofore, under corporation direction, been improved to a width of fifteen feet from the lot lines, the first ten feet paved with brick and the balance to the curb graded and sodded; and it will be noted from the facts stated on the first page of this opinion that a part of the proposed improvement consist- of filling the space between the brick sidewalk and the new curb with "good rich dirt" to be smoothed to a grade with the brick sidewalk and new curb and covered "with good, live, fresh sod."

The point is made that conceding the constitutionality of the Barrett law, the ordinance is void for want of power in the common council, under the statute, to assess the cost of filling with rich dirt and sodding against the abutters. The first section of the act (4288 Burns 1894) provides that the common council "may have the sidewalks graded and paved, or the whole width of the street graded and paved" under the provisions of the act. It may well be doubted if the authority here conferred can be extended to grading with a particular quality of earth, designed not for the permanency of the improvement, but to produce a luxuriant vegetable growth. We think the words "grading and paving" are employed in the statute in the sense that the surface of the ground shall be made to conform to a regular line by cutting and filling with any sort of dirt suitable to the maintenance of the grade, and which may be most cheaply obtained, and smoothly covering the same with some hard substance with the single view to permanency and easy travel for footmen and vehicles.

It is probably true, though we do not so decide, that the common council, in their general dominion over the streets, have implied power to construct lawns and otherwise decorate those parts of the street not necessary to public travel, at the expense of the general treasury, but when it seeks to exercise the taxing power and to levy upon a particular class the cost of an improvement, purely ornamental, it must be able to point to some express provision of
186 the statute conferring the right; no power to tax will arise
by implication. Lemon *v.* Chum, 1 Blackf. 337, 338; Lafayette *v.* Cox, 5 Ind. 38; Slessman *v.* Crozier, 80 Ind. 487; Gallup *v.* Schmidt, 56 N. E. 443.

The council has express authority of law to require the planting of shade trees at the expense of the abutters. (§ 3541 Burns 1894, 3105 Horner, clause 46) but it cannot be said that this right carries with it the power to construct lawns, or other decorations, in the streets and to enforce the cost thereof against the abutters. The power is at least doubtful "and any fair, reasonable doubt concerning the existence of power is resolved by the court against the corporation and the power denied." Dillon's Mun. Corp. 4 ed. § 89; approved: Crawfordville *v.* Braden, 130. Ind. 149, 152; Williams *v.* Davidson, 43 Texas, 33; Corvallis *v.* Carlile, 10 Oregon, 139; Kirkham *v.* Russell, 76 Va. 956.

We therefore hold that the ordinance, so far as it provided for the grading with rich dirt, and sodding as a part of the proposed improvement, was void as being *ultra vires*, and that the appellant was entitled to an injunction against so much of said proposed improvement. Equity will enjoin the exercise of an unauthorized power.

Sackett *v.* New Albany, 88 Ind. 473; Board etc. *v.* Gillies, 138 Ind. 667; Dillon Mun. Corp. 4 ed. § 914.

If entitled to any part of the relief sought, the demurrer to the complaint should have been overruled.

Judgment reversed with instructions to overrule the demurrer to the complaint.

Baker J., dissents from so much of the opinion as affirms the constitutionality of the Barrett law.

187 *Dissenting Opinion.*

I regret my inability to agree with my brethren in their construction of the Barrett law. In stating my reasons, with all due deference, I think it proper first to determine accurately the question presented for solution. The Federal Constitution is not what the citizen may read it to be, but is what the Supreme Court of the United States declares it to be. I concur in the statement that, prior to the Norwood-Baker decision, the method stated in § 752 of Dillon was constitutional, that is, that the legislature in its discretion might declare *as a matter* of law that the whole cost of a street improvement and the special benefits to abutting property equaled each other, and that the cost should be apportioned according to frontage, and that the property-owners were entitled to a hearing before a tribunal authorized to review the assessment and see that it justly conformed to the frontage basis. For brevity I shall call this the "old" constitution. I concur in the statement that, since the Norwood-Baker decision, the method stated in § 752 of Dillon is unconstitutional, and that nothing short of the method stated in § 761 of Dillon is constitutional, that is, that the legislature must provide a method by which the special benefits to contributing property shall be determined *as a question of fact,* and that the excess of cost above the sum of special benefits is a general benefit to be paid for from the general treasury, and that property-owners are entitled to a hearing before a tribunal authorized to review the assessment and see that it justly conforms to the basis of benefits in fact received. For brevity, I shall call this the "new" constitution. The text-books and reports are full of the general statement that "the only basis for special assessments is special benefits." Concerning this proposition there has never been any disagreement, so far as I have been able to learn. But from this common starting point, two very dissimilar lines of thought have been followed. In one, it was said: "Special benefits are the only legitimate basis for special assessments, but the legislature may declare as a matter of law that the property-owner's special benefits are exactly equal to his special assessment by frontage." In the other, it was said: "Special benefits are the only legitimate basis for special assessments, but the property-owner may not be specially assessed
beyond his special benefits found as a matter of fact." So,
188 finding in reported cases the expression that special benefits
are the only legitimate basis for special assessments does not
of itself show which theory a court has adopted. It is hardly con-

ceivable that a court would be following out the two theories at the same time. They seem as far apart as the poles, as essentially different as a question of law is from a question of fact. A legislative act, it seems to me, must have some consistent theory underlying it. It cannot well be two different things at once. The legislature must have intended the one or the other, not both. And, though it is within the range of possibilities that the legislature in 1889 might have framed a law which would meet the requirements of the "new" constitution of 1898 and which would be permissible under the "old," the question is, which theory was it that the legislature intended to conform to in the Barret law? Is it likely that, by prescience or by chance, the legislature hit upon the requirements of the "new" constitution that were in the "old"? Or, on the contrary, did the legislature intend to carry out the same policy, sanctioned by the judiciary, that had then been in operation for nearly forty years,—with the addition of the bond feature?

Before proceeding with the question, it may be well to notice two lines of argument advanced by counsel for appellee, to which my brethren, perhaps unconsciously, may have accorded some weight. One is, that this court must presume that the legislature intended its act to conform to the constitution, and therefore this court by intendment should supply to the act whatever is needed to make it constitutional. The other is that the Supreme Court of the United States will follow any line of decision that this court may adopt. Whether or not this last statement is true is not within the province of this court to decide, and whether, if that were true, it is an argument addressed to the reason or an appeal to what counsel may believe to be the prepossession of this court, is not worth while to consider. But counsel's first contention is of great importance. If the contention were correct, then this court and every court has committed the grievous wrong against an independent and co-ordinate branch of the Government every time a statute has been held to be unconstitutional. But, it seems to me, such a process is not judicial construction. Judicial construction is not an unbridled force,
189 operating this way in one case and that way in another, according to caprice or what courts may think would be good legislative judgment. The function of judicial construction is, not to hold statutes constitutional, but to determine the meaning of statutes. If it is found that the legislature has acted within the scope of its powers, courts should let the act alone whether they deem it wise or not. If it is found that the legislature has usurped power and invaded the reserved rights of the people, it should be the duty of the courts rigorously and jealously to uphold the rights of the people, even if they think the legislature ought to have the power it attempted to exercise. The first business of the courts is to ascertain judicially the meaning of the statute. Whether the statute is constitutional or unconstitutional cannot be determined until the meaning of the statute is first determined. And that meaning should be determined according to rules of law that the courts should uniformly follow. If courts recognize no rules in declaring the legislative intent, or disregard the lawful order of applying recognized

rules, the people, the bar and the inferior tribunals would have no means by which to make even a fair guess at what would finally be declared to be the law. If there is no law to control courts' interpretation of law, as well might there be no law at all. *Non licet judicibus de legibus judicare, sed secundum ipsas.* But, if counsel were correct in the contention that the court should first examine the constitution and then by construction mold the statute to fit it, the argument, it seems to me, should operate against appellee, and not in its favor, for the constitution that the members of the legislature of 1889 had sworn to support was the "old" constitution. They may have had the prevision to see that a "new" one was coming, but they were not bound to frame their laws according to its fashion. Yet, the impression remains with me that my brethren have first laid out the new pattern and then cut the old material to fit it.

The Barrett law is too lengthy to set out here in full. But, omitting such portions as are exhibited in the majority opinion, I shall endeavor to give the framework of the statute. The first section provides for the beginning of street-improvement proceedings 190 by the petition of property-owners. The second section authorizes the common council to declare by ordinance the necessity for street improvements, and directs notice of the passage of such an ordinance to be given by publication. "Said notices shall state the time and place when and where the property-owners along the line of said proposed improvement can make objections to the necessity for the construction thereof." This section does not purport to relate to the method of assessment, or to give property-owners a hearing on any subject except the necessity of the proposed improvement; and, as the power to decide is left within the unqualified discretion of the council, the objections which property-owners could make on the question of the necessity of the improvement would necessarily be advisory only. Accordingly, it is decided by this court that the common council may enter an order for the construction of the improvement before giving notice of the resolution of necessity. Barber etc. Co. *v.* Edgerton, 125 Ind. 455, 462. This being so, I am unable to perceive how section two has any application to the construction of the sections that point out the procedure after the performance of the work has been determined upon. The third section, omitting the part in reference to sewers, declares that "the cost of any street or alley improvement shall be estimated according to the whole length of the street or alley, or the part thereof to be improved, *per running foot,* * * * and the city or incorporated town shall be liable to the contractor for the contract price of said improvement, and the *owners of lots or* parts of lots bordering on such street or alley, or the part thereof to be improved, * * * *shall be liable* to the city for their proportion of the cost *in the ratio of the front line of their lots* owned by them to the *whole improved line* for street and alley improvements, * * * and the city or incorporated town *shall have a lien* upon such lots or parts of lots, respectively, *from the time such improvement is ordered,* for such costs of improvement, collectible as hereinafter provided,

* * * and the owners of such unplatted lands bordering on such street or alley or part thereof to be improved *shall be liable* to the contractor for their proportion of the cost *in the ratio of the front lines of such unplatted lands* owned by them to the whole *improved line;* and in making the *assessment* against such owners for the improvement of such lots or parts of lots and unplatted lands (the cost) shall be assessed upon the ground front-
191 ing or immediately *abutting* on such improvement *back* to
the distance of *one hundred and fifty feet* from such front line, and the city or incorporated town *and the contractor shall have a lien thereon* for the value of such improvement. * * * Any mistake in the description of the property or in the name of the owner shall not vitiate the lien of such *assessment.* Such city or town shall be liable and pay for all that part of such street or alley improvement as shall be occupied by the street and alley crossings, and may order that any part of the total cost of any of the improvements in this act mentioned shall be paid out of the general fund." The fourth section provides for an allowance to the owner of any lot who, before the contract is let, has made any improvement in front of his lot in accordance with the general plan of improvement for his street; and provides for taking security from the contractor. The fifth section: "When any such contract shall be made, or shall have been heretofore made, and shall have been in progress of fulfillment, the common council * * * shall have power to cause estimates to be made from time to time of the amount of work done by the contractor, and to cause the same to be paid out of the treasury, deducting a reasonable amount of percentage to secure the completion of the contract until the whole shall be finished, and to prescribe the time in which the whole shall be completed, and such estimate shall be a lien upon the several parcels of ground upon which they are assessed to the same extent that taxes are a lien, and shall have the same preferences over other demands, and such liens shall be in favor of the city or incorporated town and the owners of the certificates or bonds hereinafter mentioned, to secure the city or incorporated town and such owners the reimbursement for such cost of improvement hereinafter provided for. The common council of such city or the board of trustees of such town, with the concurrence of two-thirds of the members thereof, may order or cause any or all of the improvements mentioned in the first section of this act, and repairs of any kinds of street- and alleys to be made in like manner, without such petition, and either charge and cause any or all of the expenses thereof to be assessed and collected, as hereinafter provided, when petition is made, or if it is deemed just and right by the common council of such city or the board of trustees of such town, to cause such expenses, or any part thereof, to be paid out of the general revenue of the city or incorporated
192 town." The sixth and seventh sections are set out in the ma-
jority opinion. The eighth section authorizes the issuance of improvement bonds, in anticipation of the collection of the assess-

ments, for the payment of which bonds the lot-owners provide the money in annual installments, and commands that, after the assessment has been confirmed by the common council, "no suit shall lie to restrain or enjoin the collection of such assessment, and the validity of such assessment shall not be questioned, and such bonds, when issued, shall transfer to the owner thereof all the right and interest of such city or incorporated town in and to such assessments and the liens thereby created, with full power to enforce the collection thereof by foreclosure or otherwise, under any of the provisions of this act." The ninth section provides for the foreclosure of assessment liens, and transfers the city's interest in the liens to the holders of the bonds. The tenth section authorizes the collection of assessments by the city treasurer by sale upon precept, and allows the lot-owners the right of appeal to the circuit court of the county, but "in case the court and jury shall find, upon trial, that the proceedings of said officers subsequent to said order directing the work to be done are regular, that a contract has been made, that the work has been done, in whole or in part, according to the contract, and that the estimate has been properly made thereon, then said court shall direct the property to be sold and conveyed by the sheriff thereof as the said treasurer is hereinafter directed to sell and convey property liable to street improvements." In regard to section ten, it is evident that, under any construction of section seven, the appeal from the precept has become nugatory; for, the assessments having been made conclusive on the hearing before the council, the property-owner may not again contest what has been finally adjudicated. But section ten is important in considering the changes made in street-improvement proceedings by the Barrett law.

Now, the question being under which of the two inconsistent methods of laying assessments the legislature intended to act,—whether under the "old" constitution according to special benefits declared as a matter of law, or under the "new" according to special benefits to be determined by the assessing officers as a matter
193 of fact,—the answer should require an examination of the
whole statute, in the light of the circumstances surrounding the legislators in 1889, in order to determine the entire scope and manifest intent of the act. And the first of these circumstances is the attitude of this court.

For nearly forty years prior to 1889, street improvements were made in this State under laws that declared that the special benefits and the assessments by frontage for the entire cost, except for street and alley crossings, equaled each other; and this court uniformly held that such laws were in harmony with the "old" constitution. In Snyder *v.* Rockport, 6 Ind. 237, May term, 1855, an act was assumed and declared to be constitutional that directed the town board, on petition of two-thirds of the owners of abutting property, to assess the whole cost upon all abutting property and to apportion the cost according to the last assessed valuation of such property. In Goodrich *v.* Turnpike Co., 26 Ind. 119 May term 1866, the constitutionality of a local assessment act, wherein the legislature had

fixed the "special benefits" arbitrarily as a matter of law, was under consideration, and this court, among other things, said: "It is claimed that the assessment authorized by this statute is not a tax, not a burden or charge imposed by the legislative power of the State upon persons or property to raise money for public purposes, but the exercise of the power of eminent domain, in taking private property for public use, 'without just compensation.' There is a manifest distinction between the taxing power and that of eminent domain. Both, in effect, appropriate private property to public uses. They differ only in degree. Taxation exacts money from individuals as their share of the public burdens, and the tax-payer, according to the theory of our system, receives a *just compensation* in the benefits conferred by the Government in the proper application of the tax. When, however, property is appropriated by virtue of the right of eminent domain, it is taken, not as the owner's share of a public burden, but as so much more than his share. Many of our public improvements are local in their character, and confer special benefits on those in their immediate vicinity. By a long line of decisions of this court, these benefits may be set off against damages sustained by the appropriation of private property for public use in the construction of such works. In the case in judgment the legislature has
determined, and this matter is within its power, that this is a
194 proper subject for taxation, and that the burdens imposed is the
just share of each person embraced within the provisions of the
act." In Palmer *v.* Stumph, 29 Ind. 329, May term 1868, it was said: "By this act the rate is the same upon every one within reach of the assessment, *that is the exact benefit each may receive from the improvement of the street. The legislature have adopted this method of reaching that result.* It is certainly reasonable to suppose that, as a rule, property along the line of a street improved will be equally benefited; that, as a rule, the *property fronting upon a street, foot by foot, will be of equal value and should therefore be equally assessed.*" In Ray *v.* City of Jeffersonville, 90 Ind. 567, May term, 1883, an assessment under the street-improvement law of 1881 was attacked on the ground that the act was in violation of section 21 of article 1 of our constitution, which provides that "no man's property shall be taken by law without just compensation;" and the court held the act valid as against that objection. This court, through Mitchell, C. J., in Ross *v.* Stackhouse, 114 Ind. 200, November term 1887, declared: "Special assessments for street and other similar improvements are upheld upon the theory that each lot or tract of land assessed is benefited in a special and peculiar manner in a sum equal to the amount estimated or assessed against it." Through the same judge the court in Garvin *v.* Daussman, 114 Ind. 429, May 8, 1888, in speaking of the kind of notice and hearing that was thought to satisfy all constitutional requirements, said: "In the imposition of poll or occupation taxes, where a certain sum is assessed against each individual exercising a given avocation, or according to his age, *without regard to actual benefits,* the necessity of notice and a hearing is reduced to a minimum. To a measureable extent, the same principle is involved when the cost of an improvement is, as

by law in proper cases it may be, apportioned by mere mathematical calculation, according to a certain rate per front foot. * * * The principle which underlies and upholds special assessments, such as that involved in the present case, is, that the lands assessed are enhanced in value to an amount equal to the cost of the improvement, which is to be apportioned among those specially benefited in the manner prescribed by law. * * * It is essential to the public good that the necessity for street and other public improve-
195 ments, and the cost of making them, and such other proceedings as are necessary to insure the prompt execution of the work, be determined and taken in a comparatively summary way. * * * If, therefore, the law provides for giving *notice* and *for a method* whereby the property-owner may ultimately challenge the correctness of the assessment made against his property, in respect to whether it was made in good faith, *without intervening mistake or error, and according to the method and under the safeguards provided by the law*—the constitutional provision is deemed to be satisfied."

Taking the foregoing as a fair illustration of the judicial history of the question down to 1889, I cannot agree in the statement that the constitutionality of the front-foot method had been considered only in reference to the provision requiring uniformity and equality in taxation and never in reference to "just compensation" and "due process of law;" and I am unable to reconcile such a contention with the admission that Dillon and Cooley were not without warrant in classing Indiana "as one of the majority States upholding the doctrine that it is competent for the legislature conclusively to declare that the total cost of a local improvement shall be assessed equally against the frontage."

The legislature of 1889 not only knew this judicial history but also were aware that it was occasioned by a uniform and consistent course of legislation since 1852. Prior to 1889 the street-improvement laws had been changed many times, and yet it is agreed that the underlying plan remained the same. In 1889 certain changes were made; and my brethren, if I understand them, state that the legislature intended to abandon the whole theory of local assessments under the "old" constitution and to adopt the theory of the "new." And this, on account of the people's dissatisfaction with the law. But it is said that "it is evident that the discontent did not arise from the method of frontage assessments as a rule, for that principle had been consistently maintained in every enactment since 1852 and was carried into the Barrett law."

The last declaration of this court on the subject of street improvements, prior to the meeting of the legislature in January, 1889, was made in Garvin *v.* Daussman, 114 Ind. 429, in May, 1888. In that case, as in some earlier ones, the constitutionality of the arbi-
196 trary front-foot method was upheld not only in respect to "uniform and equal taxation" but also in respect to "just compensation" and "due process of law," and the court then advised the legislature that "the determination of the common council * * * may be made conclusive. * * * It is essential to the public good that the necessity for street and other public improve-

ments, and the cost of making them, and such other proceedings as are necessary to insure the prompt execution of the work, be determined and taken in a comparatively summary way." In making up the Barrett law, the legislature did not strike out into new fields; but they took, as the foundation to work upon, the old street-improvements statutes of this State, which are confessedly based upon the arbitrary front-foot method; and adopted from other States certain elements that stood as component parts of the arbitrary front-foot method. Compare Bates An. O. St. 1899, §§ 2293*a*. 1–9, and 2293 *b*, *c*, and *d*; also New York Laws 1870 ch. 619, 1881 ch. 689, 1884 ch. 510, 1885 ch. 396 & 406, 1893 ch. 550, 1895 ch. 816; and Spencer *v.* Merchant, 100 N. Y. 585, Jones *v.* Tonawanda, 158 N. Y. 438, 53 N. E. 280, Lyon *v.* Tonawanda, 98 Fed. 361. The new features that were not in our former statutes are the provisions for the resolution of necessity for the issuance of bonds and the foreclosure of the liens represented thereby, for the laying of the assessments by the city engineer, and for the substitution of the common council for the circuit court as the tribunal whose judgment, after a "hearing," makes the assessment conclusive. As these features are well adapted to fit into the scheme of laying street assessments by the arbitrary front-foot method, and as such was their place in the legislative plans of Ohio and New York and perhaps other States, it strikes me as a somewhat violent assumption to say that the legislature of 1889 must have intended, by the introduction of these provisions, to grant the property-owners rights *beyond* those given by the "old" constitution that was then in force and to afford them the protection guaranteed by the "new" constitution of 1898. The proper assumption would be that the legislature did not intend to depart from a long-settled policy or to have the basis of assessment, which was brought forward from our former statutes, viewed in any other light than that of its settled construction. The new provisions, except section six, do not purport to fix any rule for laying the assessments. Section six expressly makes frontage the basis for street assessments. So, it is found that in the only new
197 section which speaks of the method of assessment the same plan is apparent that inheres in the old matter which was re-enacted. And in no other way could section six have been harmonized with the former laws which were used as the foundation of the new. Yet on the word "hearing" in section seven is hung a construction which, as it seems to me, conflicts not only with the former laws but also with the concurrently new matter in section six. My brethren seem to have overlooked the consideration that in enacting the Barrett law, the legislature may have found that the then existing statutes, which permitted the property-owners separately and one at a time to contest in the circuit court the correctness of their assessments, did not afford a satisfactory basis for the issuance of bonds, and that the substitution therefor of a "hearing" before the common council, at which all objections could be disposed of together, furnished "a comparatively summary way" of rendering the assessments conclusive, as suggested in Garvin *v.* Daussman, *supra*.

It seems to me that my brethren have acted upon the plan of first adopting a construction of section seven and then construing the rest of the act (so far as it is set forth by them) in a way to conform thereto. I think this is not a proper method of interpretation, and I cannot, under the rules of construction as I understand them, find the meaning in section seven that has been given to it.

The language of the section furnishes no foundation for the construction adopted. It makes no allusion to special benefits. It fails to command the city to refrain from assessing upon the abutting lot an amount in excess of the special benefits actually received by it, and to refrain from assessing upon the property in the taxing district an amount in excess of the sum total of the special benefits actually received by the several parcels of contributing property. It fails to command the city to pay from the general treasury the excess of cost above the total special benefits—the part that benefits only the municipality at large. Benefits and damages are the varying degrees above and below zero on the compensation scale. If a lot-owner's special benefits were below zero, from what source and by what method is he to make even? The section fails to provide. These omitted matters might have been fully and 198 explicitly supplied by the legislature by tacking them onto the word "hearing," but it did not do so. My brethren say that "from the term 'hearing' is necessarily implied the power to administer some adequate remedy." That remedy, they say must be a d-termination of special benefits actually received, for otherwise the legislators are accused of insincerity, dissimulation and mockery. The argument seems to me a plain begging of the question. The question is, did the legislature intend to provide the "hearing" required by the "old" constitution then in force, or the "hearing" required by the "new" constitution of 1898? The argument seems to assume that in 1889 no "hearing" was a "hearing" unless it was for the purpose of determining benefits actually received as a matter of fact. Although I agree in the statement that well-disposed tax officers would remedy their omissions and mistakes, if they noticed or were informed of them, without any "hearing," yet I say that the legislature never had the power to frame a law that shut off the property-owner on the presumption that the assessing officers would make no omissions nor mistakes. In all valid taxation, three things have ever been required. First, a law directing the assessing officers how to proceed. The authority to tax is exclusively a legislative power. "This is manifest from the slightest consideration of what taxation is. *It is the making of rules and regulations* under which the necessary revenues for all needs of government are to be apportioned among the people and collected from them." Cooley on Taxation (2nd ed.) 41. Second, an assessment by the proper administrative officials, which must be made in substantial conformity to the method prescribed by the law,—for the expression of one method is the exclusion of all others. Third, an opportunity for the property-owner to have a "hearing" before some tribunal, with judicial powers, on the question whether or not the assessing officers have substantially complied with the method prescribed by the law.

So the word "hearing" does not necessarily imply a hearing on special benefits as a matter of fact; for, on the question of the correctness of special assessments for special benefits declared as a matter of law, the property-owner was entitled to a "hearing," and it would have been oppression and confiscation to have denied it to him.

The city is the actor in prosecuting the proceedings that result in a judgment making the assessments conclusive upon the
199 lands of abutting proprietors. The engineer files his report
assessing each piece of contributing property a certain sum as he has computed it according to the commands of section six. The hearing provided for in section seven is, according to the language of the act, a *hearing* upon *the report of the engineer and the assessments therein.* It is axiomatic that in all hearings, the tribunal must determine the case *upon the charge filed against the defendant.* This is true, not only in all cases before regularly ordained courts, but also in all special proceeding before special tribunals. In proceedings before city commissioners for the opening and vacation of streets (§ 3166 *et seq.* R. S. 1881 and Horner 1897, § 3629 *et seq.* Burns 1894), before circuit courts and before boards of county commissioners for the establishment of public drains (ch. 49 R. S. 1881 and Horner 1897, ch. 49 Burns 1894), before boards of county commissioners in the various proceedings relating to free gravel roads (ch. 70 R. S. 1881 and Horner 1897, ch. 76 Burns 1894), the land-owners are afforded a hearing on the question of special benefits, not because they are offered a *hearing,* but because the charge, upon which the hearing is had, *is that their particular lands are severally specially benefited.* In all these cases the *question* for the tribunal to determine on the hearing is *whether the engineer* (or viewers or corresponding officials who formulate the *charge* against the property-owners) *has fully, impartially and correctly performed the duties laid upon him by the statute.* If he has, judgment confirming his action is rendered; if he has not the tribunal alters or amends, or requires him to alter or amend, his charge to conform to what it should have been in the first place if he had complied with his duties under the statute, and then renders judgment on the charge. This principle has been fully recognized in the street-improvement cases of Garvin *v.* Daussman, 114 Ind. 429, and City of Terre Haute *v.* Mack, 139 Ind. 99. In Hutcheson *v.* Storrie, 51 S. W. 852, June 19, 1899, the supreme court of Texas had before it a law that is exactly the same in essentials as the Barrett law. After the engineer files his report of the total cost, etc. and of the assessment upon each lot by frontage, the city council gives notice by publication of a *hearing* when the property-owners may "object to any such acts and proceedings and show wherein they have been or may be wronged or injured thereby, and ask for a revision or correction of the same." The city council
cannot make the final assessment until all objections have
200 been heard and determined. It will be observed that the
Texan property-owners were given an opportunity to "show wherein they have been or may be wronged or injured" by the front-foot assessment. This is certainly as broad as the right to

"make objection" to the report and the assessments therein. And the court said: "The foregoing provision of the charter authorizes the property-owner to call upon the city council to revise or correct errors committed in the proceedings had in assessing the cost of improvement against his property, *but it does not empower the council to do anything that it or its officers could not have done in the first instance.* The words 'revision' and 'correction' mean that the council may be called upon to review that which had been done, and *to* make the proceedings conform to the law. Vinsant *v.* Knox, 27 Ark. 272. The city council and the officers acting under the authority of the charter of the city of Houston having no power in the first instance to consider the question of benefits in fixing the amount to be charged against Mrs. Hutcheson's property, a revision and correction *of the acts done* could not give relief against the wrong complained of. * * * The claim that, upon petition of Mrs. Hutcheson, the council could have afforded relief from the unlawful exaction, is wholly unsupported by the terms of the law, and is in direct conflict with many of its provisions. *The wrong did not consist in a failure to follow the directions of the law, but in obeying its unconstitutional requirements.*" So, on the *hearing* mentioned in section seven of the Barrett law, the inquiry must be confined to the question whether or not the assessment reported by the engineer has been made as it ought to have been made in the first instance, that is, in conformity to the terms of the law prescribing his duties,—unless that hearing, of all the hearings in the world, is to be made an exception to the universal rule that a tribunal must determine a case on the charge filed against the defendant and is not at liberty to discard that charge and reach out and draw in some other from undefined sources and by undefined methods.

On the "hearing," the common council "may adopt, alter or amend such report and the assessments therein." It is true that "alter" means "to make otherwise." But it does not follow that the report and the assessments therein cannot be made otherwise than the engineer made them except by abandoning the method of 201 testing the assessments by the standard of special benefits declared as a matter of law and following the method of testing the assessments by the standard of special benefits actually received determined as a matter of fact. If the engineer made any mistakes in following out the front-foot method prescribed for him, his report and the assessments therein would be made otherwise by correcting the errors. But "alter" is used in connection with other words. The council "may amend" the report and the assessments therein. "Amendment" is usually understood in law to mean the supplying of deficiencies. If the engineer made any omissions of property or other material matter, his report and the assessments therein would be amended by supplying the deficiencies. The council "may adopt" the report and the assessments therein. If the engineer, as the assessing officer, has made no mistakes nor omissions in laying the assessments in his report, surely the council, as a reviewing tribunal, should be permitted to confirm the assessments. In taking the actual language of the clause, something more than the word

"alter" should be considered. For example, it makes a difference whether the auxiliary verb "may" or "shall" is connected with "alter." Standing alone "alter" can be given the broadest definition to be found in the dictionaries; and if the auxiliary verb and the object are to be assumed and not taken from the actual language of the clause itself, it is possible, of course, to say that the common council "*shall* alter the *basis* of the assessments in the engineer's report." But the actual language is that the council may adopt, alter or amend the engineer's report and the assessments therein. The method on which the engineer's report and the assessments therein are based has been continuously asserted throughout the preceding sections. The canons of interpretation require that general words be limited to the sense of the context. "Not only are words and provisions modified to harmonize with the leading and controlling purpose or intention of an act, but also by comparison of one subordinate part with another; that is to say, the sense of particular words or phrases may be greatly influenced by the context, or their association with other words or clauses." Sutherland St. Const. § 262. "General words or clauses may be restricted to effectuate the intention or to harmonize them with other expressed provisions. Where general language construed in a broad sense would lead to absurdity, it may be restrained. The particular inquiry is not what is the abstract force of the words or what
202 they may comprehend, but in what sense they were intended
to be used as they are found in the act." Sutherland § 246.

To insert into the seventh section the elements that the legislature failed to include is, I think, not only violative of the plain language of that section, but is destructive of other parts of the act. The primary rule of construction is to take the language of the legislature in question according to the plain and ordinary meaning of the words, without adding to or taking therefrom, and, if the language so taken does not create an ambiguity, to accept it as declaratory of the legislative intent. But if there were an ambiguity, then the next rule of construction should require the court so to resolve the ambiguity as to give effect and purpose and meaning to the other parts of the act. If the ambiguity (supposed, for the sake of argument) were resolved in favor of the idea that the council on the hearing is required to determine the assessments on the basis of special benefits actually received, then the sixth section is deleted from the act, and the legislature is convicted of the folly of having provided elaborately and explicitly for a method of assessing upon each front foot throughout the improvement an equal sum (a method that necessarily excludes the consideration of special benefits actually received) and then declaring that on the hearing the council, not *may*, but *shall* disregard and throw aside all that has been done relating to assessments and begin *de novo* and make the assessments by the method of determining the special benefits actually received. My brethren seek to save some purpose and meaning in section six, by holding, as I understand them, that the engineer does not make the assessments but simply reports certain facts for the enlightenment of the council when that body enters

upon the making of the assessments according to special benefits actually received. If this were true, section six would neverthless accuse the legislature of dealing in futilities. How would the council, when that body purposes to enter upon the making of the assessments according to special benefits actually received, be enlightened by being informed of the total cost of the improvement? The average cost per front foot? The name of each property-owner? The number of front feet owned by each? The amount due upon each lot, ascertained and fixed by multiplying the cost per front foot by the number of front feet of each lot? The legal description of each lot?
203 How would these items afford the council any information on
those matters on account of which my brethren say that special benefits actually received should be considered namely, that it is "clear that all property bordering upon a municipal highway is not affected in the same way by an improvement of the latter; that in some cases the grade may be so raised or lowered as to impair most seriously the use and value of the property; in others, that some property may be situate upon a general level, highly improved and in a business part of the city, while others upon the same street may be remote from business, lying low and near a water-course, and practically worthless for business or residential purposes; in others, some abutting lots may be 20 feet and others 200 feet deep?" But it is not true and the engineer simply reports certain facts and makes no assessments. He is required to ascertain and fix the amount due upon each lot by multiplying the average cost per front foot by the number of front feet of each lot. This is an assessment, as will hereinafter more fully be shown. It is sufficient for the present to point out that the legislature has in express words defined the engineer's ascertainment and fixing of the amounts due upon the several lots as "assessments." The legislature says that the matter in review before the council as a tribunal is the engineer's report and the *assessments therein*. And the matters, other than the assessments, in the engineer's report are material only on the theory that the property-owners are afforded a "hearing" to challenge the correctness of the assessments, as "hearing" was defined in Garvin *v.* Daussman, 114 Ind. 439. It is true that, if a property-owner's assessment were made on the basis of special benefits actually received, it could be figured out that the assessment amounted to so much per front foot, $4.98 in one case and $1.30 in another. But it would have been just as reasonable for the legislature to require the engineer to report the number of persons in each property-owner's family; for, in the same way, it could be figured out that the assessment amounted to so much per head.

To insert into the seventh section the elements that the legislature failed to include would also destroy the fifth section of the act. That section empowers the council to pay the contractor from time to time during the progress of the work. Such payments are made out of the treasury and are declared to be liens upon the abutting property.
204 The city incurs no personal liability to the contractor. but acts
merely as an instrumentality in collecting money for the contractor from the property-owners. Quill *v.* City of Indianapolis,

124 Ind. 292; Spidell *v.* Johnson, 128 Ind. 235. The plain meaning of the section is that if the city shall *advance* money from the treasury to the contractor, the city shall have the absolute right to reimbursement from the property-owners by means of the liens that, by this fifth section, are put upon the abutting property. If the city, under section five, should advance to the contractor ninety per centum, say, of the cost, and if, under section seven, as my brethren construe it, the city must limit the assessment against each parcel to an amount not exceeding the special benefits actually received by it, fifty per centum, say, of the cost, then the plain meaning of section five is utterly destroyed and the city would be left with a loss of forty per centum, say, of the cost, although the city had begun and carried forward the improvement under a resolution declaring that all of the cost, except for street and alley crossings, should be borne by the abutting property. If city officials had understood this necessary result of the construction contended for in this and other cases pending in this court, they might not have been so ready to deprive themselves of so much cash or debt-incurring margin to use for other purposes.

To insert into the seventh section the elements the legislature failed to include would also destroy the third section of the act. This section provides *the fund for paying the contractor.* As soon as the work is determined upon, the council makes a contract with the best bidder. The contractor gives a bond for the prompt and faithful performance of the work. The contract is of course binding upon him, and he must execute it or be liable on his bond. He enters into this binding contract on the faith of a positive legislative declaration: "The city or incorporated town shall be liable to the contractor for the contract price of said improvement, and *the owners of lots* or parts of lots bordering on such street or alley or the part thereof to be improved, *shall be liable* to the city for their proportion of the costs *in the ratio of the front line of their lots* owned by them *to the whole improved line* for street or alley improvements, and the city or incorporated town shall have a lien upon such
lots or parts of lots, respectively, from the time such improve-
205 ment is ordered, for such cost of improvement; * * *
(which) shall be assessed upon the ground fronting or immediately abutting on such improvement back to the distance of one hundred and fifty feet from such front line, and the city or incorporated town and *the contractor shall have a lien thereon* for the value of such improvement." As already stated, the city is not personally liable to the contractor. If the city has advanced money, it has the lien by which to secure reimbursement. If the contractor receives his contract price in improvement certificates or bonds, he has the lien by which to collect the contract price of his labor and materials. This section also says that the city "shall be liable and pay for all that part of such street or alley improvement as shall be occupied by the street and alley crossings." The plain meaning of section three is that, unless the city voluntarily assumes in advance to pay some definite percentage of the total cost, the city shall pay for street and alley crossings and the property-owners shall pay for

the rest of the improvement; and that, if the city assumes a certain percentage, the residue of the total cost, except for street and alley crossings which must be paid for by the city, is to be borne by the property-owners. By the implied power that my brethren find in section seven, this meaning is destroyed. If the assessments are to be measured by the actual benefits which the property-owners receive from the improvement, it is evident that the improvement as a whole must be considered. The question would be, how much special benefit does each lot actually receive from this improvement? And each owner's contribution towards the cost as a whole would be determined accordingly. And the excess of cost, as one sum, would have to be paid by the city. It seems indisputable that the total cost would thus be divided between the city and the property-owners on a contingency that bears no relation to the number of feet in the street and alley crossings. Yet section three clearly separates the improvement itself and the liability therefor into two distinct parts.

Further, in regard to section three, my brethren say that it should be noted that the provision is "that the cost shall be estimated by the running foot, not assessed." They quote the definition that an assessment is the "adjusting of the shares of a contribution towards a common beneficial object according to the benefit received."
206 Here, again, my brethren seem to revert to the idea that the plan required by the "new" constitution is the only one in which special benefits are the sole basis for special assessments. But, as already shown, special benefits were the common starting point of the two divergent lines of thought. So, if the definition selected by my brethren were the one the legislators had in mind, it would not disclose which method they intended to pursue. But it seems clear to me, from an examination of the whole act, that the definition the legislators intended to express was that an assessment is "an *official estimate* of the sums which are to constitute the basis of an apportionment of a tax between the individual subjects of taxation within a district." Anderson's L. Dict. In section three, the part of the sentence that commands how *the estimate* shall be made and what the liability of the lot-owner shall be, ends with a semicolon, and the sentence proceeds: "and in making the *assessment* against such owners for the improvement of such lots or parts of lots and unplatted lands (the cost) *shall be assessed* upon the ground fronting or immediately abutting on such improvement back to the distance of one hundred and fifty feet from such front line, and the city or incorporated town and the contractor shall have a lien thereon for the value of such improvement." Again in section three: "Such *assessments*, with the interest accruing thereon, shall be a lien upon the property *so assessed* and shall remain a lien until fully paid." And in section ten: "In case any of the owners of lots or parcels of ground on which such *assessments* have been made shall fail or refuse for the space of twenty days after the date of the *estimate* to pay the amount thereof due by such person to such contractor, such contractor shall file his affidavit in the clerk's office of said city, stating that the whole or some part of said *assessment* remains unpaid," etc. And again in section ten: "And in case the

court and jury shall find, upon trial, the proceedings of said officers subsequent to said order directing the work to be done, are regular, that a contract has been made, that the work has been done, in whole or in part, according to the contract, and that the *estimate* has been properly made thereon, then said court shall direct said property to be sold," etc. It therefore seems clear that the legislature understood an "official estimate" to be an "assessment." And
the legislature did not confine itself to the use of the word
207 "estimate;" for, in the part of section three that my brethren
have omitted, it appears in plain words that the lots shall be "*so assessed.*"

Again, it is said that section three contains no mandate that the property "shall ultimately be required to contribute equally per front foot." I do not see how language could be made clearer: "The owners of lots * * * shall be liable * * * in the ratio of the front line of their lots owned by them to the whole improved line." This liability is secured by a lien. It is the fund on which the contractor relies for payment. And it is the only fund, if the city is up to its debt limit, or becomes so after the contract is made and before the work is completed.

My brethren say that section three requires "that the liability shall relate to the frontage." But I take it that they do not mean to concede that the liability shall be according to the frontage. They only mean that the liability for special benefits in fact received after it is determined at the conclusion of the work, is susceptible of being figured into a relation with the frontage,—a phase of the subject that has already been noticed sufficiently. But it is said that "the measure of liability and lien here mentioned are only conjectures at most, since they arise before an ascertainment of the facts, by measurement, necessary to their definite determination." The order for the improvement, which enters into the contract, and the contract itself, disclose the dimensions, location and character of the work, and the price per front foot in terms, or in terms reducible to the front foot. So far as the contractor is concerned, the moment the contract is let, he can determine the amount of liability of each property-owner and of the city for street and alley crossings as well as when the work is finished. It is true that in the assessment made by the engineer, at the conclusion of the work, the "total cost" may include other items, such as advertising, etc.; but in these matters the contractor is not interested, for the contract is the limit of his claim and lien. City of Huntington *v.* Force, 152 Ind. 368. But if there were any uncertainty in the amount finally to be allowed the contractor, no uncertainty would thereby be introduced into the liability, for the lien by the front foot could be fixed in advance for whatever amount the contractor's due proved to be.

In endeavoring to leave some purpose in section three, my brethren, if I comprehend their meaning, hold that the section
208 does not fix any basis for assessments but only provides for
a *prima facie* calculation of liability. This seems to me a purpose that is contrary to the entire scope and manifest intent of the

act. But I admit that it would be — some purpose, if all the lot-owners, except the "aggrieved" mentioned in section seven, might, by not objecting and not asking to be heard, accept the *prima facie* calculation as a correct statement of their liability. Such a construction, however, would at once run counter to the objection that the statute did not provide for a "uniform and equal" rate of assessment. Suppose that the *prima facie* calculation was $1000 against each A and B, who own equal frontage; that A is "aggrieved" and B is not; that A proves to the satisfaction of the council that his special benefits actually received are $500; that A offers to prove that B's special benefits actually received are $1500; that the council agrees with A as to the truth of the matter, but holds that, since B has made no objections nor appeared to be heard, B has the right to accept the *prima facie* amount as the true amount;—then B receives $500 in actual benefits that he does not pay for, and A is compelled to pay (1) his special benefits actually received, (2) his proportion of the city's contribution on account of general benefits, and (3) his proportion of the special benefits accruing to B and all others similarly situated. Now, to avoid this difficulty, it is further held that all persons whose lands are included in the engineer's report are bound to take notice that the council will so increase or decrease the *prima facie* calculations as to make them equal the special benefits actually received. And, in holding that the *prima facie* calculations are not even *prima facie* the true amounts, but that the amounts must be adjusted on the radically different basis of actual benefits, my brethren come around to the original position of discarding all the steps provided for in the sections preceding the seventh and of requiring the council to determine the assessments *de novo* on the basis of actual benefits, thus depriving section three of any intelligent purpose.

It seems to me incredible that the *legislature intended* that its positive and explicit mandates, expressed in the prior sections, 209 should be overborne by an implication read into section seven. And I think it equally faulty to suppose that the legislature intended that the contractor should bind himself, under penalty, to perform work, for the payment of which section three gives him a lien upon the abutting property by the front foot, and then that the common council, at the procuration of the property-owners, should abrogate the contract, should destroy the improvement certificates or bonds, should approve and accept the work and deprive the contractor of his pay. To quote from Hutcheson *v.* Storrie, 51 S. W. 848, 45 L. R. A. 289: "In support of this conclusion, we call attention to the potent fact that the city had entered into a contract with Storrie for the performance of the work at a stipulated price and with the agreement that he should be paid in improvement certificates, which would hold a lien upon the property, before the *amount* of the assessment was ascertained. If the engineer, for instance, *committed an error* in estimating the cost of the work in front of Mrs. Hutcheson's property, then a revision and correction of that act by the council could be had and the wrong could be corrected, because the contract itself furnishes the data, *and the correction would*

accord with the contract. If, however, the council had changed the basis of the assessment against Mrs. Hutcheson's property *from the costs of the work to that of benefits received by* the property, whereby the amount assessed would be lessened, *the contract would have been annulled.* A construction should not be placed upon the language that would empower the city to destroy the contract without the assent of Storrie." If the pavement contractors had understood this necessary result of the construction contended for in this and other cases pending in this court, they might not have been so ready to take contracts under an act which deprives them of the absolute right to define liens on the lots of the property-owners and remits them to the uncertainty of collection from municipalities. In Cason *v.* City of Lebanon, 55 N. E. 768, it was held that a contractor, in contracting to do street-improvement work under the Barrett law, must take notice of the city's indebtedness; that, if the contractor could not collect from the city for its part of the liability, the whole contract was not destroyed; that the consideration to be paid by the abutting property-owners was sufficient to support the contract; and that the property-owners had no
210 ground of complaint unless the contractor put in higher bids than they would have if the city's part of the expense was collectible. This strikes me as justifiable doctrine, if the improvement itself and the liability therefor are considered as divided into two distinct parts which may be known to and examined by both the contractor and the property-owners when the contract is let and before the work is begun. But under the construction of the Barrett law that is now adopted, the contract, *at the time it is made,* is severable neither as to the work nor as to the liability therefor. After the work as an entirety is done, a severance of the total liability is made; but, until then, no one could tell what was the extent of the city's liability or what the property-owners'. If, at the time the contract is entered into, the city be indebted to the limit, it is likely that the contractor's bid would be higher on account of the uncertainty of getting his pay. Yet, no matter how high his bid, the chance of even getting his money back would depend upon a contingency, after his labor and materials were expended, entirely within the power and discretion of the adverse parties to the contract. And if, at the time the contract is entered into, the city have a debt-incurring margin to the amount of the contract, the council, without the consent of the contractor, could exhaust that margin in water works, electric lights, etc., and then find that the actual special benefits to the property-owners were not half the amount of the contractor's expenditures. Street improvements are public improvements. Special benefits are benefits that are not common to the citizens in general. How much the contractor may collect as special benefits and how much as general benefits, is left for his adversary in the contract to say.

By my brethren's reading of section seven, that is, that the council on the hearing upon the engineer's report and the assessments therein shall disregard the method of assessment pursued down to that point and upon which the contract is based and shall substitute a *de novo* inquiry into the special benefits actually received, the legislature is accused and found guilty of ignorance of the meaning or even the existence of the word "benefits." Yet on the statute book, as already pointed out, there were many instances in which assessments for improvements were carefully provided for on the basis or by the 211 method of ascertaining the special benefits as a matter of fact and limiting the assessments to that amount and apportioning the cost in ratio to such benefits; *and in this very statute, the Barrett law, assessments for the construction of sewers are directed to be limited and apportioned according to benefits.* Hereinabove only the material parts of the act relating to street improvements have been referred to. In reference to the assessment lien given in section three, the language concerning sewer construction is that "the cost of any such sewer *shall be apportioned among the lands,* lots and parts of lots, *benefited thereby, and according to such benefits,* * * * *and the owners,* * * * of the lots or parts of lots benefited by the construction of such sewer *shall be liable,* for the construction of such sewer, *for the benefit of such lots or parts of lots* thereby." In reference to the duties of the engineer in making his report to the council, the first six items from the sixth section relate to street improvements. The seventh item in that section relates to sewer construction: "*Seventh. In the case of the construction of a sewer, a description of each lot or parcel of lot benefited thereby, together with the owner's name, and the fair proportion of the cost of such sewer, according to the benefits thereby conferred, that should be assessed against such lot or part of a lot.*" If a sewer is constructed and a land-owner objects to his assessment, the hearing on the engineer's report, provided for in section seven, gives him his "day in court" on the question of benefits *because the charge* on which the hearing is had *is thath is lands should be assessed a certain sum according to the benefits conferred.* Sutherland says that attention should be given not only to the language used but also to "the words or expressions which obviously are by design omitted." § 239. See also § 241. It seems strange to suppose that the legislature did not know the vital difference between the engineer's assessment in street-improvement cases and in sewer cases, between the lien declared in section three for street improvements and the lien declared in the same section for sewer construction, between a method of legislatively assuming and fixing the special benefits at the cost per front-foot as a matter of statute law and a method of providing for a determination of the actual benefits as a matter of fact. And the legislature's nice particularity in making these distinctions cannot be overborne excepting 212 by reading into section seven an implication that renders meaningless many parts of the act and ignores others. All of the matter in the Barrett law in reference to sewer construction was a new feature in street-improvement statutes in this State. I believe my brethren state the rule of construction correctly: "The intention is to be ascertained by considering the entire statute; and we must proceed as we would with any other composition, construing it with reference to the leading idea and purpose of the whole instrument. The general intent is the polar star by which the meaning of any part is to be determined with a view to harmonizing the entire act." But I do not understand the purpose in stating the rule, if it is not to be followed. I find that material parts of sections three, five, six, eight, nine and ten, and the whole of the interlaced sewer law are omitted from consideration.

It is axiomatic that the constitutional provision authorizing the levy and collection of taxes is not self-executing. It is fundamental that the provisions cannot be made operative by the executive department, but only by the legislative department. It is elementary that the power must be carried into execution by appropriate legislation and that no taxing bodies or officers can make a valid assessment unless they follow with substantial strictness the precise method prescribed by the statute. If the constitutional provision be read into the statute, it is not perceived how the situation is changed. If the provision is not self-executing as it stands in the constitution, it is not self-executing when read into the statute. If it cannot rightfully be put into operation by the judicial department as it stands in the constitution, it cannot rightfully be put into operation by the judicial department when read into the statute. If it can only be carried into execution by appropriate legislation as it stands in the constitution, it can only be carried into execution by appropriate legislation when read into the statute. The appropriate legislation necessary to put into execution the constitutional provision for taxation, by the method of limiting assessments to actual benefits in street-improvements cases, cannot be supplied by the judicial department, it seems to me, without going outside its proper limits.

The constitutional provision that "no man's property shall be taken by law without just compensation" is likewise not self-213 executing. It is a negative provision—an inhibition. If the constitutional provision be read into the statute, what is accomplished? If it is only a negative provision, an inhibition, as it stands in the constitution, it is only a negative provision, an inhibition, when read into the statute. If affirmative legislation is needed to enable a city to act under the provision as it stands in the constitution, affirmative legislation is needed to enable a city to act under the provision when read into the statute. In the place of the established principles for ascertaining judicially the legislative intent, substitute the following formula: Take a statute in which the only method prescribed for fixing assessments is by frontage regardless of actual benefits; read into this statute the constitutional inhibition of the laying of assessments by that method; delete from the statute all that conflicts with the inhibition; and amend the statute by adding thereto all the affirmative legislation that is needed to prescribe a method of apportioning and limiting assessments according to special benefits actually received. In other words: Take a piece of paper and erase what is on it so that it becomes a blank; then write upon it the necessary directions by which a constitutional provision that is not self-executing can be executed.

"The certainty and stability of the law are among its chief ex-

cellencies. By following this legal injunction the common law has become a symmetrical system; the same author-ative rule applied to statutory construction gives wholesome precision to dubious generalities, and otherwise removes doubts which arise upon obscure provision, and has a salutory tendency to give confidence to those who must act upon statutes, but cannot settle their meaning." Sutherland § 313. "The aid of contemporaneous construction is invoked where the language of a statute is of doubtful import and cannot be made plain by the help of any other part of the same statute, nor by the assistance of any act *in pari materia* which may be read with it, nor of the course of the common law to the time of its enactment. Under such circumstances the court may consider what was the construction put upon the act when it first came into operation. Where this has been given by enactment it is conclusive. A contemporaneous construction is that which it receives soon after its enactment. This after the lapse of time without change of that construction by legislation or judicial decision, has been declared to be generally the best construction. It gives the sense of the community as to the
214 terms made use of by the legislature. If there is ambiguity in the language, the understanding of the application of it when the statute first goes into operation, sanctioned by long acquiescence on the part of the legislature and judicial tribunals, is the strongest evidence that it has been rightly explained in practice. A construction under such circumstances becomes established law." Sutherland § 307. "The uniform legislative interpretation of doubtful constitutional provisions, running through many years, and a similar construction of statutes, has great weight. The contemporary and subsequent action of the legislature in reference to the subject-matter has been accepted as controlling evidence of the intention of a particular act." Sutherland § 311. "It is to be observed that in the comparison of different statutes passed at the same session or nearly at the same time this circumstance has weight, for it is usually referred to as indicating the prevalence of the same legislative purpose, as rendering it unlikely that any marked contrariety was intended." Sutherland § 283. "The practical construction given to a doubtful statute by the public officers of the State, and acted upon by the people thereof, is to be considered; it is, perhaps, decisive in case of doubt." Sutherland § 309.

In the light of these canons of construction, it is important to examine the interpretation given to the Barrett law by the legislative, administrative and judicial departments of the State during the ten years that elapsed from 1889 to the adoption of the "new" constitution. But my brethren pass by all of these considerations.

In speaking of the judicial history of the State prior to 1889 they say: "That this court prior to 1889 supported the doctrine that the legislature had constitutional sanction to declare as matter of law that the special benefits to a particular district by an improvement were equally received by bordering property and equal to the total cost, has little force as an argument. The answer to it is that the injustice and hardship resulting from

the doctrine, was potential in securing legislative action for the amelioration of the rule." The inquiry being the intent of the legislature, the so-called answer is a begging of the question. The judicial history prior to 1889 is useful in showing a long-continued judicial approval of a long-continued legislative policy, and in affording the basis for the presumption that no marked contrariety
215 was intended in the Barrett law. But the judicial history
since 1889 is more important because the Barrett law itself is involved. This judicial history is found to be a continued approval of a continuation of the long-settled legislative policy. Of this, my brethren say: "There is language used in Terre Haute v. Mack, 139 Ind. 99, and perhaps in other cases in this and the appellate court, not necessary to the decision of any question presented by the record, that appears in conflict with what is here decided, but, in so far as such language may so appear, it is disapproved." In the first place, I think that an examination of the cases will show that the language disapproved was necessary to the decision of the question presented by the records. But, whether the language is disapproved because it is supposed to be *dictum* or because it is thought the cases were wrongly decided, the disapproval cannot take those cases out of the judicial history of the State. As contemporaneous expositions of the legislative intent, acquiesced in by the legislature, their force is not dependent upon the correctness of the decision from the court's present point of view. In Quill v. Indianapolis, 124 Ind. 292, May term 1890, this statement was made: "Assessments for street improvements are upheld on the ground that the adjacent property upon which the cost of the improvement is assessed, is enhanced in value to an amount equal to the sum assessed against it and that the owners have received peculiar benefits which the citizens do not share in common." In Barber etc. Co. *v.* Edgerton, 125 Ind. 455, May term, 1890, after quoting the extract hereinbefore given from Garvin *v.* Daussman, the court said: "We have no reason to doubt the soundness of the doctrine enunciated in this case, and *under this rule* sections 6 and 7 of this act (the Barrett law) afford the owners of property abutting upon a street to be improved a remedy *which the legislature, in its wisdom, deemed sufficient for their protection.*" In Terre Haute *v.* Mack, 139 Ind. 99, May term, 1894, a street improvement was made under the provisions of the Barrett law. The assessments were levied against the abutting property by the front-foot rule, except on a lot situated at the corner of another street. In the case of this lot, the amount to be assessed against it as a whole was determined by the frontage rule the same as in the case of other lots abutting on the improved street. By the Barrett law the first 50 feet back from the front line is primarily liable for the assessment and the remainder back to
216 150 feet is only secondarily liable. The first 50 feet of this
lot was owned in three separate parcels. Mrs. Hudson owned the entire frontage. Her parcel extended back 19 feet. Froeb and Morgan owned the next parcel, extending across the lot, having a width of 18.6 feet, and fronting on the side street. Mrs. Mack owned the third parcel within the 50 feet, extending across the lot, having

a width of 12.4 feet, and fronting on the side street. The engineer, in making his report, apportioned the assessment upon this lot among the three parcels, in the ratio of actual benefits. The council, on the "hearing on such report and the assessments therein," approved and confirmed the apportionment by that method. On these facts, the assessment against Mrs. Mack's property was declared to be void; and the following principles were established: That the engineer's report is the only legal basis on which any assessment can be made against any land whatever; that no assessment can be made except on an abutting lot; that such assessment can only be by the front foot; that the engineer cannot lay nor can the common council adjudge an assessment on any other rule than frontage because no other basis or method is prescribed; that the revision goes only to the correction of errors, as indicated in Garvin *v.* Daussman. Among other things, the court said: "We have nothing to do with the policy, expediency or justice of the statute. * * * It is a well-recognized rule in the interpretation of statutes, that the whole act and all its parts must be construed together so as to give effect to all the language employed, and inconsistent expressions are to be harmonized to reach the real intent of the legislature. The statute ought to be so construed as to make it a consistent whole. Sutherland Stat. Con. sections 239–246. It appears from the complaint and answer, that the engineer reported an estimate in favor of the contractors against the property-owners benefited thereby, to wit: Mary V. Hudson, on a strip or lot of ground on said Fifth street, 137.96 feet along said street and 19 feet wide, $297.06; Froeb & Morgan, a strip or lot 137.96 feet along parallel with said street, 18.6 feet wide, adjoining the strip first described, $272.16; and Amanda D. Mack, a strip or lot 137.93 feet long, parallel with said street, adjoining the last-described strip, and 12.4 feet wide, said strips or lots being lots 1 and 2 and a part of lot 3, of said Blake's subdivision. *Such an estimate as this the engineer had no right to make.* He was required by the statute, as we have seen, 217 to report the amount of such cost for improvement upon the ground bordering on the improved street, which amount he was required to ascertain and fix by multiplying the average cost price by the number of front feet, also the name of the owner of the lot so bordering on said street. The name of the owner of such lot was Mary V. Hudson, and her lot being the only one that bordered on the improved street, the amount due upon it he was required to ascertain and fix by multiplying the average cost price per running foot by the number of running front feet of her lot. And this he was required to report to the common council, and such report the amended 7th section *required* the common council to *approve and confirm, or, in case it was incorrect, to cause it to be amended, and to make the assessment according to such report.* Therefore, if the statute had been followed by the city engineer and common council, the whole amount of cost of the improvement for which the whole 150 feet back from the line of Mrs. Hudson's lot bordering on the improved street could in any event be made liable, would have been assessed against Mrs. Hudson's lot No. 1. Without the proviso in

section 3, no person whose lot or ground does not border and abut on the improved part of the street could be made liable for any part of the cost of the improvement in any event. Ray *v.* City of Jeffersonville, 90 Ind. 567. But the proviso makes such land liable only in the event that the lots or parcels preceding it toward the front or border have proven insufficient to pay the cost of the improvement. And the amount for which such ground is in any event made liable is not fixed by any assessment or ascertainment either by the engineer or common council, but it is fixed and ascertained by the balance remaining unpaid of the whole amount assessed on the front-foot lot or parcel after the exhaustion of the parcels that precede it to the front. That cannot be known and ascertained until such preceding parcels have been sold. Therefore the act of the engineer in fixing and apportioning any amount against the appellee's lot was without authority of law and void, and the act of the common council in assessing said amount against appellee's lot was void and she was entitled to have it declared so." The engineer having made and the council having confirmed an assessment according to special benefits actually received and their power to do so having been challenged, I cannot see why the language used and a full consideration of the scope and intent of the Barrett law were
not necessary to a decision of the question presented by the
218 record. This case was considered from the point of view of
Mrs. Mack. Look at it a moment from Mrs. Hudson's standpoint. She owned a parcel of land having 138 feet frontage and 19 feet depth. The assessment for 138 feet frontage was $730.21. If her parcel, after being improved, would not sell for enough to pay the assessment and back-lying parcels had to be sold to make up the deficiency,—and such cases have occurred under the Barrett law,—where do the special benefits come in? Though the legislature should declare as a matter of law, if it had the power, that the special benefits equalled the cost, it would be difficult for any one to point out wherein any special benefits as a matter of fact were derived from the proceedings. In Keith *v.* Wilson, 145 Ind. 149, May term, 1896, it was stated: "The law assumes that the property will be benefited to an amount equal to the cost of the improvements thus made." In Cason *v.* City of Lebanon, 55 N. E. 768, it was claimed that a railroad company was bound by a contract with the city to improve the street and that heretofore an ordinance *requiring the property-owners to pay for the whole improvement* except street and alley crossings was invalid. This court declared that "Said contract did not deprive the city of the power to improve said street in the manner alleged in the complaint, at the expense of the abutting property-owners, as provided by law." Though the statute was not particularly discussed in that case, it is sufficiently clear that the court considered it settled that the law provided for the construction of street improvements, except street and alley crossings, "at the expense of the abutting property owners." In Sands *v.* Hatfield, 7 Ind. App. 357, it was decided that, if the engineer omitted from his report any abutting property, the common council, on this fact being shown by objectors at the "hearing,"

should correct the report and alter the assessments to what they would have been if the engineer had performed his duties properly in the first instance. The appellate court, on October 24, 1899, in Indianapolis etc. R. Co. *v.* Capitol Paving etc. Co. 54 N. E. 1076, said: "Conceding that appellant's right of way is 'land' within the meaning of the charter, the question remains whether the right of way lying wholly within Kentucky avenue is within the designation of land abutting or bordering on the same avenue. We think the statement of the question furnishes its own solution.

The city can assess only such lands as its charter designates,
219 and, as the charter has designated lots or lands abutting or
bordering on the street, none other can be assessed. We are not authorized to give the words used in the statute other than their well-defined and commonly accepted meaning. Conceding, without deciding or assuming, that the company's right of way is benefited by the improvement, the question is still unsolved, because the basis of the assessment is not property that will be benefited, but property that abuts or borders on the street. In authorizing the construction of such improvements, the legislature has assumed that they will benefit that property which abuts or borders on the part of the street improved. The right to impose such a tax is based upon a presumed equivalent. It has not assumed that any property other than that designated will be benefited. What property the local officers may believe will be benefited is not the question. If a property-owner is an abutting owner, he must bear his share of the burden, because the legislature has so directed." So it appears that the judicial department of this State has always hitherto entertained the same belief in regard to the scope and intent of the Barrett law that it did in regard to the street-improvement laws prior to 1889. The legislature has never indicated any dissent from this judicial interpretation, but on the contrary has shown its understanding and approval thereof.

The legislative department of this State made the method of assessment prescribed in the Barrett law conform to the constitutional requirement concerning taxation and compensation *as that department has always understood them.* That understanding was, in the language of Dillon (quoted in the dissenting opinion in Norwood *v.* Baker), that "*whether the expense* of making such improvements shall be paid out of the general treasury, or be *assessed* upon the abutting property or other property specially benefited, and, if in the latter mode, whether the assessment shall be upon all property found to be benefited, or *alone upon the abutters, according to frontage*, or according to the area of their lots, is according to the present (then) weight of authority considered to be *a question of legislative expediency*." The legislative department of this State has always understood that the only basis for special assessments was special benefits; but that it was a matter of legislative discretion to declare absolutely by law that *the special benefits were always and invariably equal to the cost of the improvement*; that, if in sewer and highway and drainage acts the equality of cost and benefit
220 were not absolutely declared by law but were left open to the
determination of the truth by the assessing officers, whose

assessment of actual benefits was reviewable before some tribunal duly clothed with power and procedure to that end, it was a matter of legislative grace and not a matter of constitutional compulsion; and that, if the legislature chose to exercise its discretion by declaring that the cost of street improvements should be assessed upon the abutting property by frontage, the citizen could no more complain than in any other case in which the legislature had determined a question of legislative expediency. The Barrett law was enacted in 1889, and it was amended in 1891. It applies to all towns and cities not specially classified. In 1891 the legislature passed an act concerning the government and powers of cities of 100,000 population (Indianapolis). Acts 1891, p. 137, on pages 175–181 are the provisions relating to street improvements. The method prescribed is to assess the cost upon the abutting property by frontage; and no provision is made in the act for a "hearing" before the council or board of public works, but the property-owners have only the "hearing" described in Garvin *v.* Daussman. And, although at each subsequent session, acts regarding street improvements have been passed and the charter of Indianapolis has been amended, the legislature has seen no occasion for changing the foregoing method for paying for street improvements. In 1893 (Acts 1893 p. 56) the charter of Indianapolis was so amended that the cost of paving street and alley crossings, which had before been borne by the city, was assessed against the property-owners; but the charter was left unchanged so far as a "hearing" is concerned. At the same session, on March 3, 1893, (Acts 1893 p. 65) an act was approved relating to the government and powers of cities of 50,000 population (Evansville). On pages 104–110 are the provisions relating to street improvements. These provisions are the same as those in the charter of Indianapolis. On the same day, March 3, 1893, (Acts 1893 p. 202) an act was approved relating to the government and powers of cities of 35,000 population (Ft. Wayne). On pages 243–249 are the provisions relating to street improvements. These provisions are substantially the same as those in the charter of Indianapolis and Evansville, except that the Barrett law is followed in providing for a hearing upon the assessment before the board of public works. The case of Terre Haute *v.* Mack, 139 Ind. 99,
221 was decided on October 16, 1894. *At the next session* of the
legislature after this decision, on March 11, 1895, (Acts 1895 p. 239) an act was approved that amended the charter of cities of 35,000 inhabitants so that the total cost of the improvement should be assessed by the front-foot rule upon the abutting property back to a line equidistant from the edge of the improved street and the next street parallel to it, but that, *if a lot belonged to different persons*, the assessment thereon should be apportioned among the several parcels *according to the benefits received* from the improvement by reason of being upon, near, or having access to it. Though other acts relating to street improvements were passed at this and each subsequent session, the act last above referred to remains the only instance in which the legislature has undertaken to prescribe the method of having the assessing officers assess and a tribunal deter-

mine special benefits *as a matter of fact* in street-improvement cases. And though this act is a very limited and imperfect application of the principle, it clearly illustrates two things; first that the legislature understood the difference between "frontage" and "actual benefits;" second, that the legislature acted, as it always has, upon the assumption, sustained by the then weight of authority, that it was purely a question of legislative expediency whether or not the legislature should declare *as a matter of law* that each front foot was specially benefited to the extent of its *pro rata* share of the total cost. On the same day, March 11, 1895, an act was approved that amended the charter of cities of 50,000 inhabitants, Acts 1895 p. 258. Regarding street improvements the charter was so amended as to require the board of public works, after making out the final assessment-roll, to give notice of a day "on which said board will receive and hear remonstrances from persons *with regard to their respective assessments.* On the day named in such notice said board shall proceed to hear and determine such remonstrances and may change, modify or confirm the same. Said assessment-roll shall contain the names of the property-holders and a description of the property assessed for such improvement, and shall contain the *pro rata* assessment against each piece of property. After hearing such remonstrances said department shall deliver *such* assessment-roll as modified or confirmed to the department of finance." That the legislature intended in this, as in every other instance in which it was thought worth while to provide a "hearing" 222 before a special tribunal, that the "hearing" should be upon the question whether or not the assessing officers had faithfully performed their duties according to statute and had correctly reported the assessments as determined by the method prescribed for them to act upon,—that the review should be for the purpose of determining the correctness of the view,—is explicitly shown in another provision of this same act. Regarding sidewalk improvements the charter was also amended so as to provide for a "hearing" after the assessment-list has been prepared. "Upon the completion of said sidewalk said department shall cause to be prepared an assessment-list, and shall notify such owner in the same manner as in this section above provided. Said notice shall fix a time and place when the owner may remonstrate against such assessment. On said day such owner may appear and remonstrate, *and the board shall take final action and shall assess such owner and such real estate for the cost of such* improvement." On March 15, 1895, an act came into effect by which the charter of cities of 100,000 inhabitants was again amended. Acts 1895 p. 384. Some minor changes were made in respect to collection of installments of assessments, etc., but the charter was not amended in the matters involved in the amendments of the charter of Ft. Wayne or of Evansville. At the next session, on February 23, 1897, (Acts 1897 p. 56) an act was approved whereby the charter of Indianapolis was further amended in reference to street improvements. It is a matter of common knowledge that the practice was generally adopted by city treasurers of notifying property-owners by mail of the amounts of their assessments after

they came into the hands of the treasurers for collection, and to state in the notice that it was given voluntarily and not as a duty required. This amendment made the giving of such notice by mail obligatory upon the treasurer of Indianapolis, and further required him to publish a notice to all persons who had failed to avail themselves of the privilege of paying in instalments that unless payment was made within thirty days proceedings for the collection of assessments would be instituted. On February 26, 1897, the charter of Indianapolis was further amended. Acts 1897 p. 79. Some details about the cost of street and alley intersections, the issue of bonds, and the collection of instalments were changed; but
223 the proceedings for fixing the final assessments by the board of public works were left as they were prescribed in the original act of 1891. At the last session of the legislature, on February 2, 1899, an act came into effect, by which the Barrett law as applied to cities between 5,800 and 5,910 population was amended. Acts 1899, p. 8. It provides for the collection of the total cost, including that of street and alley crossings, from the abutters in proportion to frontage. On March 3, 1899, an act was approved that related to the government and power of cities of 23,000 population (Terre Haute). Acts 1899 p. 270. In its essential features it is the same as the charters of Evansville and Ft. Wayne. On pages 314-322 are the provisions concerning street improvements. The assessments for that purpose are to be made by the front-foot rule. But the assessments for sewer construction, according to the direction of every one of these acts, are to be laid upon the lands found to be benefited and are to be apportioned according to and not exceeding the special benefits actually received. On the same day, March 3, 1899, an act was approved that again amended the charter of Indianapolis in reference to street improvements. Acts 1899 p. 399. The amendment provides for an appraisement of the abutting property exclusive of improvements, and forbids the ordering of any improvement which, when completed, is to cost more than 25 per cent. of the aggregate appraised value. This still leaves any parcel of abutting property liable to an assessment by frontage that might exceed the value of that parcel. And the "hearing" before the council or board of public works as to the correctness of the assessment, on which the present construction of the Barrett law is built up, has remained unprovided for to the end. Is it conceivable that the legislature foresaw the "new" constitution and entertained the deliberate design of making some of these acts constitutional and others unconstitutional? Assuredly not. This whole series of acts, from the Barrett law of 1889 to the last amendment of the charter of Indianapolis in 1899, evidences a continuous and consistent legislative policy. That policy was to put street improvements upon a different basis from sewers and ditches and roads and other like special proceedings. These street-improvement statutes are the ones my brethren should have examined, if they were seeking acts *in pari materia* by which to determine the scope and intent of the Barrett law. The sewer and ditch and gravel road laws are only *in pari materia* with the sewer law interwoven in the act of 1889,

which my brethren pass by without notice. The legislature never doubted that it had the power to do as it did. It assumed that it
was purely a question of legislative expediency to require the
224 whole cost of street improvements to be assessed upon the
property by the running foot.

The administrative department of the State, as represented in the various towns and cities, have uniformly acted under the law on the same assumption. It is a matter of common knowledge that the people, the lawyers, the contractors, the municipal officers, the legislature, and the courts, have all been in accord in the understanding that under the Barrett law the city paid for street and alley crossings and the abutters paid the rest of the total cost of street improvements according to a uniform rate per front foot,—until the exigency arose, after the Norwood-Baker decision was studied, of hunting for some other meaning.

If the continuous and consistent interpretation of the Barrett law, during all the years since its passage, by all the departments of the State, were looked to, and if the canons of construction as laid down in the books were followed, that construction should be accepted as decisive.

Thus far I have been stating the reasons why I am unable to join my brethren in finding in section seven the "implied power" that authorizes the council to change the basis of the assessments. But it seems to me there is a vital difference between a power and a duty, between the right to do a thing and the obligation to do it. In this case the record shows it is admitted that the council has already decided that it will not accord the property-owners a hearing on the question of the amount of special benefits actually conferred by the improvement. Where is the command in the statute that forbids the council from basing the assessments upon the report of the engineer after it has been amended, if necessary, to conform to what the statute commanded the engineer to do in the first instance? If the legislature delegated to the council a discretion in the matter, the property-owners could not base a suit for mandatory injunction upon what they deemed a mistaken exercise of that discretion. The statute says that the council "may adopt, alter or amend the engineer's report and the assessments therein," not "shall change the basis of assessments." The statute *permits* the council to pay all or any part of the total cost of the improvement out of the treasury. This is purely and simply a matter of *option*. If the council paid the total cost, there would be no assessments. If the council determined to pay a certain portion of the total cost, the residue of the total would have to be assessed against
the abutting property in the method provided by the statute.
225 In this case the record shows it is admitted that the council
has already ordained that the total cost shall be borne by the
abutters. Now, if the improvement is to cost $10,000 and it should be found on the supposed "hearing" that the aggregate of special benefits actually received by the several parcels of abutting property was only $8000 (though the complaint avers and the demurrer admits that the abutting property is not specially benefited at all as

a matter of fact), what good would it do to have the total cost apportioned among the abutters, in the ratio of the special benefits as among themselves? Each abutter would find his property assessed with 125 per cent. of his special benefits. So, it becomes necessary to find, both in the law and in appellee's ordinance under the law, not only the right but the duty to pay the $2000 excess out of the general treasury, although it is agreed that the city ordered the improvement with the intention, and in the belief that it had the power, to ordain "that the cost and expense thereof, includ*ed* advertising, labor and material for the same, be assessed against the property on the line." And in the opinion filed by my brethren, though I notice that considerable attention is given to making out the "implied power," I fail to find anything but a fiat that transforms the "implied power" into an "imperative duty."

The views I entertain are supported by authority. In Hutcheson *v.* Storrie, 92 Tex. 685, 45 L. R. A. 289, and in Lyon *v.* Tonawanda, 98 Fed. 361, statutes were involved that are essentially the same as the Barrett law; and in Charles *v.* City of Marion, 100 Fed. —, the Barrett law was considered. I may also cite the last page of my brethren's opinion, wherein the rules regarding "implied powers" are properly indicated.

Not only am I constrained to believe that the Barrett law as enacted is unconstitutional, but I am also of the opinion that the Barrett law as now construed by my brethren is unconstitutional. And I will suggest some of the reasons for thinking so.

The taxing power is committed to the legislative department and cannot be conferred upon the judicial. All assessments must be made by administrative officers whose sole authority is to follow with substantial strictness the method pointed out by law. The property-owner is entitled to a "day in court" to challenge
226 the assessment. The court cannot make the assessment, but can only hear the challenge of the assessment already made and then enter judgment confirming or correcting the assessment. If the engineer does not make the assessment as an administrative officer, and if the council does not merely review the assessment as a court, but if on the contrary no assessment is made until the council makes it on the "hearing," the result is either that the assessment is made by a judicial tribunal, or that the "hearing" is for the purpose of enabling an administrative body to determine what assessment to make, with no opportunity for the property-owner thereafter to challenge its correctness. A common council may at one time exercise legislative, at another administrative, and at another judicial functions; but it cannot have two or three characters at the same time.

If the prescribed mode of fixing assessments by frontage is deleted from the statute as enacted, there is not a word left limiting the council to any method or prescribing any rule of procedure whatever. There would likely be as many methods as there are towns and cities in the State. Uncertainty would probably prevail until, in suits involving the Barrett law as now construed, this court formulated a definite and uniform procedure. I cannot concur in the statement that "the absence of an express rule for guidance in the exercise of the power does not impair it. It is sufficient if the power to change the assessment from the frontage rule exists." Regulations and methods in all tax matters must be prescribed by law. State Board of Tax Comm'rs *v.* Holliday, 150 Ind. 216. In the syllabus of Barnes *v.* Dyer, 56 Vt. 469, it is said: "A statute empowering the authorities of a city to construct sidewalks and make local assessments on the property fronting the same 'for so much of the expense thereof as they *shall deem just and equitable*,' is unconstitutional, in that there is no fixed, certain, and legal standard for assessment." In New Brunswick Rubber Co. *v.* Comm'rs, 9 Vroom 190, 20 Am. 380, the following appears: "It is not sufficient that the legislative act merely declares that the cost, or a part of the cost of the improvement, shall be assessed upon the lots drained by the sewers to be built. It must, as well, establish some rule—some definite scheme—within constitutional limits, for the apportionment of the tax upon the lands on which such special burthen is imposed. An act of the legislature, directing a tax for a local improvement to be imposed upon particular lands, to be 227 legal or effectual, must consist of something more than a mere authorization to assess a sum of money, the cost of a local improvement upon the designated property—the act must determine the mode of distributing the burden; the property out of which the tax is to be made must be designated, and some certain standard of assessment established; it cannot properly be left by the *legislature* to the discretion of *others* to fix the method." Courts, for example. A property-owner is entitled to a law that operates according to constitutional principles without his intervention. According to the Barrett law as now construed, a property-owner does not have a tax that is assessed on the basis of his actual special benefits without affirmative action on his part at the "hearing" to see that it is put on that basis. Further, a lawful assessment must show on its face the principle according to which it is laid. New Brunswick Rubber Co. *v.* Comm'rs, *supra.* This would appear under the Barrett law as enacted, but not as construed. It seems to me that the property-owner is subjected to a tax "without due process of law."

The abutters alone are named in the engineer's report. My brethren hold that all such persons are bound by the published notice to know that assessments will be made at the hearing which shall correspond with special benefits actually received. They do not hold, as I understand them, that persons who are not abutters must take notice that their back-lying property will be assessed for actual benefits. The Barrett law as enacted made such persons secondarily liable. This was so, as was pointed out in Terre Haute *v.* Mack, 139 Ind. 99, not because they were included in the assessment either as made by the engineer or as confirmed by the council, for they were not, but because the statute made them sureties, so to speak. Now, under the Barrett law as enacted, the legislature created a uniform taxing district, over all of which the contractor had his lien. But under the Barrett law as construed, an irregular district is created, without any valid reason inhering in the subject-matter

of the act to warrant the irregularity; and the lien of the contractor is to that extent diminished. If A owns a parcel having 50 feet frontage and 150 feet depth, and B owns a parcel having 50 feet frontage and 20 feet depth, and C owns a parcel having 50 feet width and
130 feet depth and lying back of B's parcel, it seems to me that,
228 if A is liable for actual special benefits on his 7500 square
feet, and B is liable on his 1000 square feet, and C is not liable at all on his 6500 square feet, not only is the taxing district irregular without reason, but the parties are not subjected to a "uniform and equal rate of assessment."

The notice provided for in section seven is not sufficient to give the council jurisdiction over any subject except "objections" nor any person except one "aggrieved." In Kuntz *v.* Sumpton, 117 Ind. 1, 7, the court said of the board of equalization statute: "It does provide notice sufficient for two classes of judgment, but for no others. It provides for notice sufficient as to all general changes in the levy, and sufficient as to all who have complaints to make, and over these matters jurisdiction arises when the notice is given as the statute directs. But there is no provision for notice to the individual tax-payer whose list is to be added to or whose valuation is to be increased. * * * This notice, it is obvious, cannot require every tax-payer in the county to be in attendance at the meeting of the board to see that no additions are made to his list."

The contract is made between the contractor and the council for the city. Under the Barrett law as enacted, the liability of the city was limited to the cost of street and alley crossings; and under section seven the council had no discretion, and no duty but to see that the balance of the cost was properly apportioned among the property-owners according to frontage. The council, for the city, has control of the expenditures of the general fund; but, under the Barrett law as enacted, no conflict of interest arose among the council and the property-owners and the contractor. Under the Barrett law as construed, however, a three-cornered conflict of interest at once arises, and the council is made the exclusive and final judge in its own case. In Board *v.* Heaston, 144 Ind. 583, it was held that a board of county commissioners in allowing or disallowing claims against the county acted merely in the capacity of an auditing committee. The court said: "If it was a suit against the county for the recovery of money in the sense urged by counsel, then the claimant was the plaintiff and the county the defendant, and the commissioners were in the discharge of a double duty; acting as a court, and also
as the representative of the defendant, or otherwise the county
229 could not be said to be in court. Such a construction as con-
tended for apparently leads to an absurdity. It would follow that the court and the party defendant were virtually the same. It is an axiom of the law that no man can be a judge in his own case." A proper method of giving the people "due process of law" is illustrated in our statute in reference to the opening of streets. In that statute it is recognized that the general treasury will be subjected to an indefinite liability, and the city is not made the exclusive and final judge in its own case.

On the whole, it seems to me that my brethren in steering away from the rock of Scylla have plunged into the whirlpool of Charibdis.

230 THE STATE OF INDIANA:

Supreme Court.

I, Robert A. Brown, clerk of the supreme court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said court in the above-entitled cause.

In witness whereof, I hereto set my hand and affix the seal of said court, at the city of Indianapolis, this 7th day of August 1901.

[Seal Supreme Court, State of Indiana.]

R. A. BROWN, *C. S. C.*

[Endorsed:] In the supreme court, November term, 1899. Thomas B. Adams *vs.* City of Shelbyville Certified copy of opinion. Robert A. Brown, clerk supreme court.

Endorsed on cover: File No. 18246. Indiana supreme court. Term No. 393 Hannah Schaefer, plaintiff in error, *vs.* Julius Werling, Henry Draper, and Martin B. Schaefer Filed August 14, 1901.